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NEW DELHI, TUESDAY, MARCH 31, 1955,

## ELECTION COMMISSION, INDIA

## NOTIFICATIONS

*New Delhi, the 26th March 1953*

**S.R.O. 625.**—WHEREAS the election of Shri Ramcharitar Rai Yadava, as a member of the Legislative Assembly of the State of Bihar from the Sursand Constituency of that Assembly has been called in question by an Election Petition only presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kalicharan Singh S/o Babu Mandhari Singh, Koeria Pipra, P. S. Bela, P. O. Parihar, District Muzaffarpore;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

## ELECTION TRIBUNAL, PATNA

## PRESENT:

Sri Basu Prasad, Retired District Judge—*Chairman*.Sri Hargobind Prasad Sinha, Retired District Judge—*Member*.Sri Aditya Narayan Lal, Advocate—*Member*.

## ELECTION PETITION No. 30 of 1952

In the matter of Election to the Bihar State Legislative Assembly from the Sursand Constituency in the district of Muzaffarpur.

Kalicharan Singh, son of Mandhari Singh, resident of Koeria Pipra, P. S. Bela, P.O. Parihar, District Muzaffarpur—*Petitioner*.

*Versus*

1. Ramcharitar Rai Yadava, resident of Sardal Patil, P. O. Parihar, P. S. Bela, District Muzaffarpur.
2. Fulgenda Singh, resident of Jabadi, P. O. Parihar, P. S. Bela, District Muzaffarpur.
3. Dwarika Lat, son of Lakshmi Narain, resident of Sursand, District Muzaffarpur.
4. Jainarain Lat, son of Lakshmi Narain, resident of Sursand, District Muzaffarpur.
5. Ramchandra Thakur, son of Jagdeo Thakur, resident of Bakharl, P. S. and P.O. Sursand, District Muzaffarpur.—*Respondents*.

## FOR THE PETITIONER:

1. Mr. Awadhesh Nandan Sahey, Advocate.
2. Mr. Madan Mohan Prasad, Advocate.

## FOR THE RESPONDENT No. 1:

1. Mr. N. C. Ghosh, Advocate.
2. Mr. Kanhaiya Prasad Verma (2), Advocate.

Kalicharan Singh, one of the candidates for election to the Bihar State Legislative Assembly from the Sursand Constituency in the district of Muzaffarpur, has filed this election petition under Section 81 of the REPRESENTATION OF THE PEOPLE ACT, 1951, calling in question the election of Ramcharitar Rai Yadava (respondent No. 1), and seeking a declaration that the petitioner has been duly elected.

The petitioner states that he and the respondents had been duly nominated for election; that the polling took place at various polling stations on several dates from the 4th January till the 23rd January, 1952; that during the polling about 38 bona fide voters were not allowed to cast votes by putting ballot papers in the ballot boxes on the ground that ballot papers for persons bearing those names had already been issued; that these voters, therefore, gave "tendered votes" under Rule 29 of the REPRESENTATION OF THE PEOPLE (CONDUCT OF ELECTIONS AND ELECTION PETITIONS) RULES, 1951; that on the counting of votes it transpired that the respondent No. 1 had secured 7182 votes, whereas the petitioner had polled 7180 votes, the other candidates having secured much lesser votes; and that, according to law, the "tendered votes" were not taken into account by the Returning Officer.

The petitioner alleges that the "tendered votes" had been cast by genuine and bona fide voters and if such votes be taken into account, the petitioner will be found to have secured a majority of valid votes.

The election petition is resisted by the returned candidate, respondent No. 1, who has filed a written statement contending that the election petition as framed is not maintainable in law. He contends that, as the petitioner does not make any allegation of any corrupt or illegal practice against him (respondent No. 1), he can get no relief under the law. He denies the petitioner's allegation that all the persons who gave "tendered votes" were genuine and bona fide voters. On the contrary, he states that the persons who subsequently cast their votes in favour of the petitioner were not genuine voters at all, but were false persons who personated themselves as such.

The respondent No. 4 also filed a written statement, but he was absent at the trial.

The following issues arise for determination:

*Issues.*

1. Is the election petition as framed maintainable?
2. Has the result of the election been materially affected by improper reception or refusal of votes or by reception of votes which are void?
3. Has the petitioner received a majority of valid votes?
4. Is the election of respondent No. 1 liable to be set aside?
5. Is the petitioner entitled to a declaration that he has been duly elected?

*Findings.*

**Issue No. 1.**—Section 81 of the REPRESENTATION OF THE PEOPLE ACT, 1951, provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of Section 100 and Section 101 of the Act. It appears that the present election petition calls in question the election of the returned candidate on the ground specified in sub-section (2) (c) of Section 100, and a declaration that the petitioner has been duly elected is sought under section 101(a) of the Act. Section 100(2) (c) provides, *inter alia*, that if the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, the Tribunal shall declare the election of the returned candidate to be void. Section 101(a) lays down that if the Tribunal finds that, in fact, the petitioner has received a majority of the valid votes, it shall, after declaring the election of the

returned candidate to be void, further declare that the petitioner has been duly elected.

Mr. N. C. Ghosh, appearing for the respondent No. 1, has invited our attention to Rule 29 of the REPRESENTATION OF THE PEOPLE (CONDUCT OF ELECTIONS AND ELECTION PETITIONS) RULES, 1951, which deals with "tendered votes". Paragraph (2) of the Rule clearly lays down that such votes shall not be counted by the Returning Officer. It has been argued by the learned Advocate that there is no provision in the Election Law for dealing with "tendered votes" and that "tendered votes" cannot be taken into consideration unless the petitioner alleges some corrupt or illegal practice on the part of the returned candidate which he has not done in the present case. It is, no doubt, true that the petitioner has not alleged any corrupt or illegal practice on the part of the returned candidate (respondent No. 1). But we are not in agreement with the contention of the respondent No. 1 that "tendered votes" cannot be taken into account by the Election Tribunal unless such corrupt or illegal practice is alleged. The simple case of the petitioner, as stated above, is that some of the persons who cast their votes by putting ballot papers in the ballot boxes were not genuine voters and that the persons who subsequently came and gave "tendered votes" were genuine voters. Such case is clearly contemplated by Section 100(2) (c) and Section 101(a) of the REPRESENTATION OF THE PEOPLE ACT, 1951.

It has been, however, contended on behalf of the respondent No. 1 that Section 100(2) (c) has reference to Rule 47 of the REPRESENTATION OF THE PEOPLE (CONDUCT OF ELECTIONS AND ELECTION PETITIONS) RULES, 1951. Rule 47 provides that a ballot paper contained in a ballot box shall be rejected under certain circumstances specified in the rule. This rule comes into play at a later stage, namely, at the stage of counting of votes which is done under Chapter V of Part V of the REPRESENTATION OF THE PEOPLE ACT, 1951. The question regarding "Right to vote" is dealt with under Chapter IV and refers to an earlier stage when the polling takes place. The expression "valid votes", referred to in Section 101(a), means votes of those persons who have right to vote within the meaning of Section 62 of the Act. Corrupt and illegal practices are contemplated by Section 100(2) (a) and Section 100(2) (b), and not by Section 100(2) (c) of the Act.

It, therefore, seems to us clear that the election petition as framed is maintainable and we find accordingly,

**Issues Nos. 2 and 3.**—It appears that during the polling 38 persons gave "tendered votes" at various polling stations. Out of those persons, 17 have been examined as witnesses on behalf of the petitioner and 7 as witnesses on behalf of the respondent No. 1. One of the persons who gave "tendered vote" was Mst. Surji. Two Surjis have been examined in this case, one on behalf of the petitioner and she is P.W. 15, and the other on behalf of the respondent No. 1 and she is R.W. 15. Each party claims that Surji examined on its behalf is the real voter. One Mst. Sunari also gave "tendered vote", but she is now dead. The respondent No. 1 has adduced some evidence regarding Sunari who gave "tendered vote". The respondent No. 1 filed a petition on 21st February, 1953, admitting that three persons, namely, Sukhdeo Raut, Ramchandra Chaudhury and Suraj Kant Jha, who gave "tendered votes" were genuine voters. The Tribunal has, therefore, to consider whether the 28 persons referred to above, who are said to have given "tendered votes", were genuine and *bona fide* voters.

The above 28 persons can be divided into five groups.

Group I consists of six persons, evidence regarding whom is of no consequence for the purpose of this case. They are—(1) Binda Prasad (P.W. 17), (2) Raghu-nandan Bherihar (P.W. 20), (3) Baldeo Mandar (R.W. 18), (4) Sukhdeo Raut, (5) Suraj Kant Jha, and (6) Ramchandra Chaudhury. The last three were named in the respondent's petition which has just been referred to.

Group II consists of five persons who are admittedly genuine voters and evidence regarding whom is material. They are—(1) Chulhai Sah (P.W. 18), (2) Raikumar Raj (P.W. 19), (3) Lachhman Khawas (P.W. 21), (4) Charitar Kandul (P.W. 24), and (5) Must. Murti (R.W. 5).

Group III consists of five persons who are admittedly genuine voters and evidence regarding whom is material. They are—(1) Lochan (P.W. 4), (2) Kuldip Mandar (P.W. 5), (3) Kitab Ali (P.W. 7), (4) Bindesar (P.W. 22), and Jharan Raj (R.W. 8).

Group IV consists of seven persons whose evidence is material and who are not admitted by the opposite party to be genuine voters. They are—(1) Sheikh Shafiq (P.W. 1), (2) Mahabir Sah (P.W. 2), (3) Jogendar Raut (P.W. 3), (4) Sheonath Jha (P.W. 11), (5) Gulab Jha Pandit (R.W. 1), (6) Majid Pasi (R.W. 3), and (7) Sannarayan Mahtha (R.W. 19).

Group V consists of five doubtful cases. They are—(1) Sadiq (P.W. 10), (2) Janak Nonia (P.W. 14), (3) Must. Surji (P.W. 15), (4) Must. Surji (R.W. 15), and (5) Must. Sunari (dead).

Before we deal with the evidence under each group separately, we should like to mention that for the purpose of finding out total number of valid votes secured by the petitioner and the respondent No. 1 we adopted the following procedure. We proposed to the parties that they should examine as witnesses as many persons as possible out of the list of persons who gave "tendered votes" and the parties then examined such of those persons as they thought fit to examine. It has been already stated that the "tendered votes" of 28 persons, or more correctly speaking, 27 persons (as only one of the two Surjis will be taken into account) have to be considered in this case. The "tendered votes" of the remaining persons need not be considered for they have not been examined as witnesses and the Tribunal is not in a position to determine whether those persons were or were not genuine voters. After the close of the oral evidence of both parties, Tendered Ballot Papers were examined and relevant Tendered Ballot Papers were marked as Court Exhibits, Exts. I to XXV. These Tendered Ballot Papers contained the name of elector and also the name of the candidate for whom "tendered vote" was given. It was found that some of the 27 persons voted for the petitioner, some for the respondent No. 1, and some for other candidates. The petitioner or the respondent No. 1 is entitled to have to his credit the "tendered vote", provided that the person who gave "tendered vote" is found to be a genuine voter. But the inquiry does not end there. If a person, who has given "tendered vote" is found to be a genuine voter, the corresponding original ballot paper issued to the person bearing that name has to be traced for the purpose of giving debit of such original vote if the original vote went to the petitioner or the respondent No. 1. For this purpose, the Tribunal, as suggested by both the parties, examined Ballot Papers of the boxes of the petitioner and the respondent No. 1 for the relevant polling stations with reference to the marked copies of Electoral Rolls. The marked copies of Electoral Rolls indicate the numbers of Ballot Papers issued to different voters, the said numbers having been entered against their names. So, by such examination, which was held in presence of lawyers of both the parties, it was ascertained whether the corresponding vote given by a person in the same name as that of the person who gave "tendered vote" was for the petitioner or the respondent No. 1 or a third party. If it is for the petitioner, it has to be debited in the petitioner's account; if it is for the respondent No. 1, it has to be debited in his account. The result of such examination has been noted and the notes form part of the record.

Now, let us deal with each group separately.

**Group I.**—(1) Binda Prasad (P.W. 17).—He gave "tendered vote" for a third party, namely, Dwarika Lat. The original vote given by a person in the name of Binda Prasad was neither for the petitioner nor for the respondent No. 1. The "tendered vote" of this witness, therefore, is of no consequence.

(2) Raghunandan Bherihar (P.W. 20).—Same comment as above.

(3) Baldeo Mandar (R.W. 18).—Same comment as above.

(4) Sukhdeo Raut.—Same comment as above.

(5) Suraj Kant Jha.—Same comment as above.

(6) Ramchandra Chaudhury.—Same comment as above.

**Group II.**—(1) Chulhai Sah (P.W. 18).—He gave "tendered vote" in favour of a third party and so that vote will not be credited either to the petitioner or to the Respondent No. 1. Since this witness is, admittedly, a genuine voter, the original vote cast in such name, which has been found to have been cast in favour of the petitioner, has to be debited in the petitioner's account.

(2) Rajkumar Rai (P.W. 19).—This witness, who is also, admittedly, a genuine voter, gave "tendered vote" in favour of the respondent No. 1 (vide Ext. XIX). So his "tendered vote" has to be credited to the account of the respondent No. 1. The corresponding original vote not being in favour of either the petitioner or the respondent No. 1, there cannot be any debit of such vote in the account of either.

(3) Lachhman Khawas (P.W. 21).—The "tendered vote" given by this witness was in favour of a third party. But the corresponding original vote was in favour

of the petitioner. As this witness is, admittedly, a genuine voter, there will be debit of one vote in the petitioner's account.

(4) Charitar Kandu (P.W. 24).—Ext. XXII shows that this witness gave "tendered vote" in favour of the petitioner. The corresponding original vote was neither in favour of the petitioner nor in favour of the respondent No. 1. As this witness is also, admittedly, a genuine voter, there will be a credit of one vote in the petitioner's account.

(5) Must. Murti (R.W. 5).—This witness, who is also, admittedly, a genuine voter, gave "tendered vote" in favour of the respondent No. 1 (*vide* Ext. III). The corresponding original vote was not in favour of either the petitioner or the respondent No. 1. There will be credit of one vote in the account of the respondent No. 1.

Group III.—(1) Lochan (P.W. 4)

(2) Kuldip Mandar (P.W. 5)

(3) Kitab Ali (P.W. 7)

(4) Bindesar (P.W. 22)

These witnesses gave "tendered vote" in favour of the petitioner (*vide* Exts. XVI, XV, XXIV and XVII). But it appears that the corresponding original votes were also in favour of the petitioner. In these circumstances, the "tendered votes", even if they are held to be genuine votes, cannot be credited to the petitioner.

(5) Jharan Rai (R.W. 8).—This witness gave "tendered vote" in favour of the respondent No. 1, as will be disclosed by Ext. XX. But this cannot be credited to the respondent No. 1, as the corresponding original vote was also in his favour.

Group IV.—(1) Sheikh Shafid (P.W. 1).—Ext. V shows that this witness gave "tendered vote" in favour of the petitioner. The corresponding original vote was neither in favour of the petitioner nor in favour of the respondent No. 1. So the petitioner will get credit of one vote if it is found that this witness is a genuine voter. The parties are, however, at variance on the point of this witness being a genuine voter.

The description of this witness, as gathered from his evidence, tallies with the description of the elector of his name as given in the Electoral Roll. The witness has said in his evidence that he appeared at the polling station and was identified before the Presiding Officer as Sheikh Shafid by the Chaukidar and the Dafadar of his village. The Dafadar (P.W. 8) and the Chaukidar (P.W. 9) corroborate his statement. It appears that the Dafadar went to his house to check his house number as stated by him and reported to the Presiding Officer that the house number was 88. The Electoral Roll (Ext. 20) shows that the house number of Sheikh Shafid elector is 88. The witness further says that he and his wife are entered as electors in the Electoral Roll. This statement is also corroborated by the entries in the Electoral Roll (see serial numbers 306 and 34 of Ext. 20). We, therefore, find that this witness is a genuine voter and the petitioner will, therefore, get credit of one vote.

(2) Mahabir Sah (P.W. 2).—Ext. IX shows that one Mahabir Sah, resident of village Sursand, appeared at Sursand Polling Station on 22nd January 1952 and gave "tendered vote" in favour of the petitioner. It is not disputed that this Mahabir Sah (P.W. 2) is the genuine voter. But it is seriously disputed that P.W. 2 went to the polling station and gave his "tendered vote". It is suggested by the respondent No. 1 that this witness was far away from Sursand on that date. We shall refer to the evidence on this point presently.

The Tendered Votes List (Ext. 2), which was prepared by the Presiding Officer at the time when tendered votes were recorded, shows that Mahabir Sah, who gave tendered vote, put his thumb impression on the List. Mahabir Sah (P.W. 2) has said in his evidence that he signed his name in Hindi. As the witness is illiterate, it is quite possible that he should have signed his name, instead of putting his thumb impression. But the Tendered Votes List belies his statement. When the witness was pressed further on this point and was shown the Tendered Votes List, he changed his statement by saying that he put his thumb impression, and not his signature on the List. This is, undoubtedly, a circumstance which raises grave suspicion against this witness and leads one to think that he did not appear at the polling station. The witness says in his evidence that one Bishum Prasad Mahta, Mukhia of Gram Panchayet, identified him before

the Presiding Officer. Bishun Prasad (P.W. 6), no doubt, corroborates his statement, but we are not impressed with the evidence on this point. From the cross-examination of P.W. 2 it appears that both the Chaukidar and the Dafadar of this village were present at the polling station when he tendered his vote. It is rather unusual that they were not asked to identify the witness.

Binda Sahi (R.W. 13), a resident of village Sursand, has stated in his evidence that Mahabir Sah was not present in the village at the time of the election. From the evidence of Misri Lal Sahu (R.W. 14), it appears that Mahabir Sah was in Nepal during that period. The witness says that he saw Mahabir Sah in Bibah Panchami Mela at Janakpur (in Nepal) which is held in the month of Aghan. Mahabir Sah remained at Janakpur, where his father-in-law's house is situated, till the end of the month of Magh. The witness further says that he and Mahabir Sah went to Tribeni Mela (in Nepal) in the month of Magh and stayed there for 14 days. From the evidence of this witness, it appears that they set out for Tribeni Mela on 13th January 1952 and stopped there till 27th January 1952. Mahabir Sah went to the Mela to do the business of a photographer. He admits in his evidence that he goes to Janakpur Mela to do such business. In view of the above evidence, we cannot accept the story that P.W. 2 went to the polling station at Sursand on 22nd January 1952. We, therefore, hold that the vote alleged to have been tendered by P.W. 2 cannot be credited to the petitioner.

(3) Jogendra Raut (P.W. 3).—From Ext. XII it appears that Jogendra Raut gave "tendered vote" in favour of the petitioner Serial No. 3898 of the Electoral Roll of village Sursand (Ext. 11) shows the name of one Jogendra Raut, aged 25 years, living in house No. 251, as an elector. Jogendra Raut (P.W. 3) has deposed that he was an elector and that the Dafadar, Ratan Pandey, and the Mukhia, Bishun Babu, identified him at the polling station. The Dafadar has been examined on behalf of the respondent and it is significant that he does not specifically deny that he identified Jogendra Raut. Jogendra Raut (P.W. 3) is son of Sukha Raut and is Amath by caste. He has stated in his evidence that there were three electors in his house, namely, he, his father, and his brother, Basudeo Raut. His statement is corroborated by the entries in the Electoral Roll. Serial No. 4274 of the Electoral Roll [Ext. 11(b)] shows the name of Basudeo Raut, living in house No. 251, as an elector. Serial No. 5481 of the same Electoral Roll shows that one Sukha Raut, aged 50 years, living in house No. 251, was also an elector.

It has been however, contended on behalf of the respondent that Jogendra Raut (P.W. 3) was not a genuine voter, but another Jogendra Raut (R.W. 10), son of Parau Raut, by caste Nonia, was the real voter. From the evidence of R.W. 10 it appears that Sukha, Mahendar, Rameshwar, Basudeo and Sri Narain, who are his relations, living in the same house, were also electors. The respondent relies upon the entries in Serial Nos. 2070, 2165 and 2289 of the Electoral Roll [Ext. 11(a)] showing the names of Mahendra Nonia, Rameshwar Nonia and Sri Narain Nonia, living in house No. 251, as electors. It is said that Nonia is also called Raut. P.W. 3 (Jogendra Raut) has, however, denied the suggestion that Nonia is also called Raut and has also denied that Nonias live in house No. 251. He has said that he does not know Sri Narain Nonia, Rameshwar Nonia and Mahendar Nonia. The petitioner's Advocate has shown that village Sursand is a big village which was divided into five blocks for the purpose of recording names of electors. Mahendar Nonia, Rameshwar Nonia and Sri Narain Nonia belonged to one block, whereas Jogendra Raut, Basudeo Raut and Sukha Raut belonged to another block. He has contended that house No. 251 of the Nonias is not the same house as house No. 251 of the Rauts. This contention appears to be correct.

Jogendar Raut (R.W. 10) has said in his evidence that he cast his vote at the polling station by putting the ballot paper in one of the ballot boxes. He does not appear to be an elector as entered in the Electoral Roll. In his cross-examination he says that the age of Sukha Raut may be about 30 years, but the Electoral Roll gives his age as 50 years. This indicates that he does not know Sukha Raut.

We find, upon consideration of the evidence on the record, that Jogendar Raut (P.W. 3), and not Jogendar Raut (R.W. 10), was the real elector. The "tendered vote" will, therefore, be credited in favour of the petitioner. The corresponding original vote given by another person in the name of Jogendra Raut not being in favour of either the petitioner or the respondent No. 1, there will be no debit of such vote in the account of either.

(4) Sheonath Jha (P.W. 11).—This witness gave "tendered vote" in favour of the petitioner (vide Ext. I). The corresponding original vote given by another

person in the name of Sheonath Jha was neither in favour of the petitioner nor in favour of the respondent No. 1. The witness gives a correct description as entered in the Electoral Roll (Ext. 15). He says that one Bathu Dusadh, Choukidar, identified him at the polling station. His statement is corroborated by the evidence of the Choukidar (P.W. 12).

It has been suggested by the respondent that the witness was in service of Raj Darbhanga at Haiya Ghat Raj Kutchery at the time of the election and so could not present himself at the polling station. The cross-examination of the witness, however, shows that during the election he was granted leave and had come home. It is, therefore, not improbable that he went to the polling station to cast his vote.

We, therefore, hold that the "tendered vote" of this witness will be credited in the petitioner's account.

(5) Gulab Jha Pandit (R.W. 1).—From Ext. VI, it appears that this witness gave "tendered vote" for the respondent No. 1. The corresponding original vote given by a person in that name was for the petitioner. So, if this witness is found to be a genuine voter, his "tendered vote" will be credited in the respondent's account and there will also be debit of one vote in the petitioner's account.

Serial No. 126 of the Electoral Roll (Ext. 17) shows that Gulab Jha Pandit, son of Marhen Jha, aged 26 years, living in house No. 152, was an elector. The description given by R.W. 1 regarding himself fits in with the entries in the Electoral Roll. The witness says in his evidence that he was identified by Lachhmi Choukidar before the Presiding Officer. The Choukidar (R.W. 2) corroborates his statement.

It has been suggested by the petitioner that this witness is the son of Thaga Jha, and not of Marhen Jha. There is no evidence worth the name to support this suggestion.

We, therefore, find that R.W. 1 is the real voter and there will be credit of one vote in the respondent's account and debit of one vote in the petitioner's account.

(6) Majid Pasi (R.W. 3).—Ext. XXIII discloses that this witness gave "tendered vote" in favour of a third party. His "tendered vote", therefore, cannot be credited in the account of either the petitioner or the respondent No. 1. But it appears that the corresponding original vote given by a person in his name was in favour of the petitioner. So, there will be debit of one vote in the petitioner's account if it is found that this witness is the real voter.

Serial No. 245 of the Electoral Roll (Ext. 13) shows that one Majid Pasi, aged 40 years, living in house No. 60, is an elector. R.W. 3 is Dhunia by caste and from his evidence it appears that he calls himself Pasi as he carries on the profession of palm-tapper. From his cross-examination it, however, appears that there are other Dhunias in his village carrying on such profession but no other Dhunia is called Pasi. His cross-examination also shows that Razak Dhunia, who lives in the same house as his, is called Razak Nadaf. The witness has said in his cross-examination that there is no person in his village by the name of Musafir, but he is contradicted by the entry in Serial No. 249 of the Electoral Roll. These are circumstances which raise grave suspicion against this witness being a genuine voter.

We, therefore, find that R.W. 3 has not been proved to be a genuine voter and so there cannot be debit of one vote in the petitioner's account.

(7) Satnarain Mahtha (R.W. 19).—The position with respect to this witness is the same as that of Majid Pasi. He gave "tendered vote" in favour of a third party, whereas the corresponding original vote was in favour of the petitioner. But it has not been proved beyond reasonable doubt that R.W. 19 is the elector as entered in the Electoral Roll.

Serial No. 5246 of the Electoral Roll (Ext. 11/b) shows that one Satnarain Mahtha, aged 34 years, living in house No. 393, is an elector. R.W. 19 has given his age as 30 or 31 years, although in the opinion of the Tribunal he does not look older than 22 years. From the cross-examination of the witness it appears that his Gotia, Suraj Narain, lives in the same house (house No. 393), but the entry in the Electoral Roll shows that Suraj Narain lives in a different house bearing the number 392 (See Serial No. 5516).

We, therefore, find that there cannot be debit of one vote in the petitioner's account.

**Group No. V.—(1) Sadiq (P.W. 10).—**Ext. II shows that Sadiq gave “tendered vote” in favour of the petitioner. But no ballot paper number has been noted against the name of this elector in the marked copy of the Electoral Roll (Ext. 15). It cannot, therefore, be said with certainty that any person bearing such name appeared at the polling station at an earlier stage. If any such person did so appear, it cannot be determined whether the vote cast by him was in favour of the petitioner, or the respondent No. 1, or a third party. In our view, therefore, it will not be safe to take into account the “tendered vote” of this witness.

**(2) Janak Nonia (P.W. 14).—**The Tendered Votes List (Ext. 7) shows that Janak Nonia gave “tendered vote”. But the Tendered Ballot Paper of Janak Nonia is not forthcoming and so it cannot be determined for whom he gave tendered vote. The corresponding original vote given by a person in that name has been found to be in favour of the petitioner. So, there can be no credit of one vote in favour of the petitioner, but there can be debit of one vote if it is found that P.W. 14 is the real voter and he gave “tendered vote” in favour of a third party. There can also be credit of one vote in the account of the respondent No. 1 if it is found that P.W. 14 gave “tendered vote” in his favour. In any case, the petitioner does not gain any vote on account of the witness, P.W. 14. The possible gain to the respondent No. 1 on account of this witness is immaterial, for the respondent No. 1 is already leading by 4 votes.

**(3) Most. Sunari.—**In this case the position is the same as that of Janak Nonia. The corresponding original vote was given in favour of the petitioner, but the Tendered Ballot Paper is wanting. The Tribunal, however, does not consider it necessary to make investigation regarding the “tendered” vote of Sunari, for any possible gain to the respondent No. 1 on account of Sunari is, for the same reasons as given in Janak’s case, immaterial.

**(4) Most Surji (P.W. 15).—**It is the case of both the parties that the real elector, Surji, gave “tendered vote” and did not appear at the earlier stage. The “tendered vote” was in favour of a third party. There is, however, controversy between the parties as to which Surji, (P.W. 15 or R.W. 15) is the real elector. But this dispute need not be investigated. The corresponding original vote cast in the name of Surji cannot be traced. In the marked copy of the Electoral Roll (Ext. 16/a) we find ballot paper No. ‘944’ entered against two names, against the name of Surji in Serial No. 1601 and against the name of Sanichar in Serial No. 1434. At the time of examination of ballot papers, a ballot paper bearing the number “333944” has been found in favour of the respondent No. 1. It is noteworthy that the number 333944 has not been noted against the name of any elector in Ext. 16/a. It has been, however, contended on behalf of the petitioner that the number “944” may be read as 333944. Even if that contention be accepted, it is impossible to determine whether the original vote cast in favour of the respondent No. 1 was cast by Surji or Sanichar. In these circumstances, we do not consider it proper to debit one vote in the account of the respondent No. 1.

Summing up, it appears that there will be credit of four “tendered votes”, namely, the “tendered votes” of Sheikh Shafid (P.W. 1), Jogendar Raut (P.W. 3), Sheonath Jha (P.W. 11) and Charitar Kandu (P.W. 24) in favour of the petitioner. There will be debit of three original votes, namely, votes given in the names of Chulhai Sah, Lachhman Khawas and Gulab Jha Pandit against the petitioner. The petitioner, therefore, gains only one vote.

There will be credit of three “tendered votes” in favour of the respondent No. 1, namely, the “tendered votes” of Rajkumar Rai (P.W. 19), Gulab Jha Pandit (R.W. 1) and Most. Murti (R.W. 5).

The respondent No. 1 polled 7182 votes and the petitioner 7180 votes, as stated in the election petition. Adding one vote in the petitioner’s account and three votes in the respondent No. 1’s account, it is found that the total number of valid votes secured by the respondent No. 1 is 7185, whereas the total number of valid votes polled by the petitioner is 7181. It is, therefore, clear that the respondent No. 1 is leading by four clear votes and we find accordingly.

**Issues 4 and 5.—**In view of the above findings, the election of the respondent No. 1 is not liable to be set aside and the petitioner is not entitled to a declaration that he has been duly elected.

The result, therefore, is that the election petition fails.

## ORDER—A

The election petition be dismissed. The petitioner shall bear his own costs and shall pay Rs. 250 as cost to the respondent No. 1.

(Sd.) BASU PRASAD, *Chairman*.

(Sd.) HARGOBIND PRASAD SINHA, *Member*.

(Sd.) ADITYA NARAYAN LAL, *Member*.

HIGH COURT, PATNA;  
The 20th March, 1953.

[No. 19/30/52-Elec.III.]

**S.R.O. 626.**—WHEREAS the election of Sardar Raghbir Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union (now dissolved) from the Patiala Sadar Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951, by Shri Joginder Singh, son of Sardar Harnam Singh, Village Talianian, P.O. Fatehgarh, District Fatehgarh Sahib, PEPSU;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

## BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. SARWATE—*Chairman*.

RAGHUNANDAN SARAN—*Member*.

E. M. JOSHI—*Member*.

ELECTION PETITION No. 166 of 1952

## PETITIONER:

S. Joginder Singh son of S. Harnam Singh, Village Talianian, P.O. Fatehgarh, District Fatehgarh Sahib, Pepsu.

*Versus.*

## RESPONDENTS:

1. Hon'ble S. Raghbir Singh, Chief Minister, Pepsu, Patiala.
2. Shri Gopal Chand, Advocate, Sanauri Gate, Patiala.
3. S. Gurdial Singh, Guru, Nanak Street, Patiala.
4. Nahar Singh, village Ranbir Pura, Tehsil and District Patiala.
5. Sat Chit Anand, Arrora Street, near Arya Samaj, Patiala.
6. Siri Ram, Ghilori Gate, Patiala.
7. Shubsher Singh, Kothi Main, Patiala.
8. S. Bhagwan Singh Grewal, M.A. LL.B., Advocate, Patiala.
9. S. Karam Singh Nagra, B.A. LL.B., Advocate, Patiala.
10. S. Kirpal Singh (Arshi), near Gurudwara Dukhniwaran, Patiala.

## ORDER

DELIVERED ON 21-3-53

At the last general elections to the Pepsu Legislative Assembly from the Patiala Sadar Constituency, the respondents were duly nominated candidates out of whom the respondent No. 1 Col. Raghbir Singh was declared returned. The petitioner S. Joginder Singh had also filed his nomination paper but his nomination was rejected by the Returning Officer on the ground that he had been nominated for the Punjab Legislative Assembly also and that nomination had been assented to by the petitioner though later he withdrew therefrom. The petitioner contends that this was not at all an adequate ground and the rejection of

his nomination for Pepsu Assembly was improper. On this ground he seeks to avoid the election of Respondent No. 1. An additional ground of the petitioner is that Respondent No. 1 was a Director of the Bank of Patiala, of the Patiala Insurance Corporation and of the Patiala Construction Company, in which concerns the State Government has interest. This made the respondent No. 1 ineligible to be chosen for the Pepsu Assembly and though the Respondent No. 1 had purported to resign from these positions before the nomination, this resignation was a mere fake. It is contended therefore that his nomination was improperly accepted.

2. The respondent No. 1 has opposed the petition controverting the allegations of the Petitioner. According to him the petitioner's nomination was properly liable to be rejected, though not for the reason stated by the Returning Officer, because he was not qualified for being registered as a voter at Taania in the Pepsu State on the basis of which electoral roll entry he was seeking this nomination. The other respondents did not enter appearance except Respondent No. 7 who by his written statement sought to support the petitioner.

3. On the pleading of the parties the following issues were fixed for trial:—

#### *Issues*

1. Did not the petitioner have the necessary qualification for being registered in the electoral roll of Bassi Constituency in the State of PEPSU under Section 19 of the Representation of People Act, 1950, and independently of the provision in Section 29(7) of that Act?
- 1(a) Whether the question of the validity of registration of the petitioner as elector at Taania in Bassi constituency had been raised before the Returning Officer?
- (b) Could the validity of that registration be called in question before the Returning Officer and if not can it be called into question before this Tribunal?
2. Whether the fact that the petitioner was also registered in the electoral roll of the Samrala Constituency in the Punjab State renders invalid his registration in Bassi Constituency in PEPSU?
- 3(a) Was the rejection of the nomination of the petitioner for the Patiala Sadar Constituency in PEPSU improper, he having already withdrawn his nomination for the Punjab Constituency?
- (b) Did the rejection of nomination for the PEPSU Constituency materially affect the result of the election in that Constituency?
- 4(a) Did the Respondent No. 1 continue to hold the office of Director in the Bank of Patiala or the Insurance Corporation of Patiala or in the Patiala Construction Company at the time of his nomination though he had already submitted his resignation of these offices?
- (b) Were these or any of these an office of profit under the Government of PEPSU at the time of nomination?
- (c) Was Respondent No. 1 not qualified for being nominated and is his election void on that account?
5. Was the petitioner entitled to make this petition and has he made out a case for declaration of the election as wholly void?
6. What is the proper order to be made in this case under Sections 98 and 99 of the Representation of People Act, 1951?

4. As soon as the hearing of this petition was concluded before us, the president's Proclamation under Article 356 of the Constitution was promulgated dissolving the present Legislative Assembly of Pepsu and directing the general elections to take place again for forming the next Assembly. The effect of this is that the members returned in the last elections lose their seats and cease to be members. The relief claimed in this petition is only a declaration that the election is wholly void which if granted would make the seat open for a fresh election. All the advantage which the petitioner wished to secure by making the petition, came automatically as a result of the proclamation. We should, therefore, have thought that the petitioner would in the circumstances, be reconciled to the position that the petition may be treated to have become infructuous and so to have abated. For reasons which are not obvious to us, we found that neither side was willing to urge or accept that it had so abated. It was argued on both sides with the same fulness and seriousness ignoring absolutely the great political change in the State and its repercussions on this case. We have, therefore, to

deal with and dispose of the petition on the merits, but in doing so we may not think of stating the reasons for all our conclusions in such detail as we would otherwise have felt called upon to do.

5. Mainly we have to address ourselves to two questions in this case namely (1) whether the Returning Officer had improperly rejected the nomination paper of the petitioner in this Patiala Sadar Constituency and (2) whether he had improperly accepted the nomination of respondent No. 1 Col. Raghbir Singh which enabled him to be returned.

6. Dealing with the first of the above points, we observe that S. Joginder Singh Man the petitioner is a displaced person hailing from Sheikhupura District now part of West Pakistan. In the prepartition Punjab Legislative Assembly he was a member and accordingly by virtue of the Indian independence East Punjab Legislative Assembly Order, 1948, he was accepted as a member of the Legislative Assembly of the (East) Punjab Province in India. In that capacity he got allotment of a house "Murray-field" in Simla. In March 1949 he became a Minister in the Punjab Government and held that office till November of the year. On the qualification of such residence in Simla he was registered as an elector on the electoral roll of Simla city. He tells us that at his suggestion the Punjab Government adopted a scheme of having 'Garden colonies' as part of their plan of rehabilitation of displaced persons in the evacuee properties and in one garden colony at Rahone in the Samrala Constituency of the Punjab Legislative Assembly he got a grant of land also. Apparently on the assumption that he was thus rehabilitated in the Punjab, his name was put in the electoral roll of Rahone also. All this time he was putting forward a claim for rehabilitation in the Pepsu also and in the first instance he got a temporary allotment of land in Vazirnagar in the Narwana Constituency on the basis of which he got his name registered on the electoral roll of Vazirnagar. Later he secured a permanent allotment in village Talaria in the Bassi Constituency and he got his name on the electoral roll of Talaria village also.

7. Founding on his right as elector in Rahone in the Punjab, he sought his nomination from Shahabad Constituency for the Punjab Legislative Assembly. His nomination there was accepted but he withdrew that candidature on 12-11-1951 under Section 37 of the Representation of the People Act, 1951. After that he filed his nomination papers for the Patiala Sadar Constituency with which we are concerned here and other constituencies in Pepsu, basing his right to such nomination on the entry of his name in the roll of Talaria. The issue here is if his name could properly have come on the electoral roll of Talaria. The petitioner does not claim that his name had come on the roll of Talaria by the application of the provision in Section 26 (7) of the Representation of the People Act, 1950. It could then be properly on that roll if he had been ordinarily resident there for not less than 180 days during the qualifying period beginning on 1st April 1947, and ending on 31st December 1949 (*vide* Sections 19 and 21 of the Act). The respondent's contention is that the petitioner was never resident in Talaria before June, 1950 and it was through the good offices of an obliging official concerned in the preparation of the electoral roll that he could find his name in the Supplementary roll of Talaria when it was under preparation in June, 1950.

8. S. 17 of the Representation of the People Act, 1950 lays down that no person shall be entitled to be registered in the electoral roll for more than one constituency, and according to S. 5(c) of the Act of 1951 a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is an elector for any Assembly Constituency in that State. In view of these explicit provisions the Returning Officer of the Patiala Sadar Constituency, when he took up the nomination paper of the petitioner for scrutiny, naturally felt the oddity of the spectacle of finding this enterprising gentleman showing himself as ordinarily resident here, there and every where, of the circumstances of the entry of his name in the electoral rolls of four different constituencies in two States and of the fact that he was trying to take what seemed to be an unrighteous advantage of the electoral roll entries in two constituencies in two States by offering himself as candidate for election to two State Legislatures in different States.

9. The Returning Officer referred to clause (2) of Article 190 of the Constitution and properly opined that it was a disabling provision by which if a person is chosen a member of legislatures of two or more states, he could keep his seat in the legislature of one State only and he was required to resign the other seats within a prescribed time otherwise all the seats become vacant. He then argued that on the analogy of that provision, if through by mistake or inadvertence a person happens to be registered as voter in two constituencies then he should exercise his option where he would like his name to remain in order to exercise his right as voter. Otherwise if he votes in both the constituencies then as provided in S. 62(3) of the Act of 1951 his votes in both the constituencies would be

void. He thought that the petitioner by assenting to his nomination in Shahabad constituency had impliedly exercised this option in favour of the electoral entry of his name in Samrala Constituency and that being so, the entry of his name in the roll of Talania could not be treated as valid and he could not use that entry as the basis for filing nomination for any constituency in Pepsu. In this view he rejected the petitioner's nomination.

10. We think that on a correct appraisal of the provisions relating to the filing and scrutiny of nominations this view of the Returning Officer is not sustainable. We do not infer from the provision in Article 190(2) of the Constitution that it confers upon a person the right to claim to stand as candidate for legislature in two states and if he is chosen as member in both, then to resign from one. For if that were to be regarded as conferring such a right, then the provision in S. 5(c) of the Act of 1951, which would be directly in conflict with that right, would be rendered nugatory when taken in conjunction with S. 17 of the Act of 1950. Such conflict can only be resolved if we assume that Article 190(2) contemplates a case in which by inadvertence a person finds himself a member of the legislatures of two States. Since the electorate have considered him to be a fit person to be their representative the constitution will not deny him the right to represent them in one place, and he is therefore required to exercise his option. Similarly the legislature contemplates a case in which an elector may be registered, in spite of the provisions to the contrary made in that behalf, in two constituencies. Here he is required to make his choice before exercising his vote, which constituency he would prefer to vote in and the penalty for voting in more than one constituency of the same class is that his votes in all are rendered void [S. 62(3) of the Act of 1951].

11. It is conceivable that such option is to be exercised by a person who offers himself as a candidate for election and who like the petitioner finding himself registered as elector in two states cannot in view of S. 5(c) of the Act of 1951 be qualified to be chosen as member in Legislature of two States and that S. 32 of that Act does not confer an absolute right to be nominated in two different states in which he happens to be registered as elector. He has to show that he is qualified to be chosen to fill that seat for which he wants to be nominated and simultaneously he is not qualified to fill seats in two legislatures. But the question of option would arise where he is being simultaneously nominated in two States. In the present case the petitioner had already withdrawn his candidature from the Punjab State. The law did not require him to make an option as to where he would claim to remain registered as elector. On the registration as elector in an electoral roll, three rights are conferred on a person, (1) Right to vote, (2) Right to be nominated to fill a seat in legislature, (3) Right to be a member of legislature. The stage for indicating his option in each case is when the exercise of the right at two places would render the act in both invalid according to law. The petitioner having withdrawn his candidature from the Punjab State rather indicated his option that he did not want to be treated as qualified for filling a seat in the legislature of that state and so may be regarded to have kept alive his right to be nominated on the qualification of his registration as elector in Pepsu.

12. The respondent has not, therefore, supported the rejection of the petitioner's nomination for the reasons given by the Returning Officer but has contended that the nomination was liable to be rejected by the Returning Officer for another reason namely that the petitioner's registration as elector in the roll of Talania was itself improper and that entry could not be used as basis for the nomination. This raises two points for consideration, (1) whether the Returning Officer could in the scrutiny of the nomination go into the question of the propriety of the electoral roll entry of petitioner's name in Talania and reject his nomination on being satisfied that his name could not properly have been entered in that roll and (2) if this tribunal is competent to go into that question, even if the Returning Officer could not, in order to find that the rejection was not improper.

13. According to S. 32 of the Representation of the People Act, 1951 any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and that Act. This means that fulfilling the qualifications prescribed by the Constitution and by the Representation of the People Act of 1951 are the first requisites for a nomination. Article 173 of the Constitution and Section 5 of the Representation of the People Act of 1951 lay down the qualifications for membership of State Legislature and reading these provisions together the qualifications necessary for membership of the Patiala Sadder Seat are that the person should be a citizen of India, that he should be not less than 25 years of age and that he should be an elector for any Assembly constituency in Pepsu 'Elector' in relation to a constituency as is to be considered for qualification is defined in Section 2(1)(e) of the Act of 1951 as meaning a person whose name is for the

time being entered in the electoral roll of that constituency. According to these provisions, therefore, the fact of the entry of the petitioner's name in the electoral roll of Talama in the Bassi Constituency of the Pepsu Assembly would qualify him to seek nomination to a seat in any constituency of that Assembly, the other qualifications of citizenship of India and of being more than 25 years of age being unquestionably fulfilled in this case.

14. But the entire large class of persons who would fulfil these qualifications are not allowed to be chosen to fill the seat, and both the Constitution in Article 191 and the Representation of the People Act of 1951 in Section 7 lay down certain other matters which are regarded and termed as 'disqualifications' so that the persons who are subject to such disqualifications could not be entitled to be nominated as candidates for election even though they may be found to be fulfilling all the necessary qualifications as mentioned above.

15. Therefore it becomes the function of the Returning Officer in the scrutiny of the nomination under Section 36 of the Act of 1951 to consider (1) if the person is qualified to be chosen to fill the seat and (2) if he is not subject to any disqualification. Objections may accordingly be made before him on such grounds to induce him to reject the nomination. Objections may be made on other grounds as well under S. 36(2), but with them we are not concerned here. S. 36 empowers the Returning Officer to make inquiry into such objections but in sub-section (7) it is laid down that "for the purposes of this section" which should mean "for the inquiry which he would make", the entry in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election, unless it is proved that the candidate is disqualified under the Constitution or under the Representation of the People Act of 1951. If the production of the entry is conclusive proof, the Returning Officer is precluded from going behind that entry and from inquiring if the qualifications (which according to law should be evidenced by the fact of that entry) are actually fulfilled or not. His function then remains only to inquire into and determine if the person is subject to any disqualification due to which the right to stand for election proved by that entry may be denied to such person.

16. Going now to S. 19 of the Representation of the People Act of 1950, it lays down two conditions of registration in the electoral roll of a constituency, (1) that the person has been ordinarily resident in the constituency for not less than 180 days during the qualifying period and (2) that he was not less than 21 years of age on the qualifying date. Under S. 28 of the Act, rules have been framed for the Representation of the People (Preparation of Electoral Rolls) Rules 1950 for preparation of draft electoral rolls and for their publication, for notice inviting claims and objections, for inquiry into such claims and objections by a revising authority and amendment of the draft roll in consonance with the revising authority's decision and for final publication of the roll thus amended. By section 24 of the Act of 1950 the electoral roll comes into force upon its final publication. There is a presumption that all these prescribed processes have been gone through before the final publication and that the roll has been prepared according to law. Therefore the entry in the electoral roll will be presumptive evidence of the person entered therein fulfilling the two conditions requisite for registration as set out above, and not only this but also it will be conclusive proof, so far as the Returning Officer is concerned, of the nominated person satisfying the two conditions of registration specified in S. 19. The right to registration conferred by that section is subject to absence of certain other conditions which are specified in S. 16 as 'disqualifications for registration', but with these we are not concerned here as the petitioner was not subject to them.

17. The challenge to the petitioner's nomination is only on the ground that he was not fulfilling the condition of 180 days' residence in that constituency on the roll of which his name appears. But as to that the Returning Officer was, it seems, bound to accept the electoral roll entry as final and conclusive, and he could not refuse to so accept it because of his knowledge that the petitioner was also registered on similar qualifications in the roll of a constituency in the Punjab State. This is also the view taken by the Election Tribunal in the case of Cawnpore District (N.M.R.) 1931—Hammond's Election Cases, 1920-35. P. 271. The Bhagalpur North (N.M.R.) 1921, the Bombay Central Division (M.R.) 1925, and C.P. Commerce and Industry, 1927 are other cases reported in Hammond at pages 165, 203 and 279 respectively, in which also the view taken was that the electoral roll entry, after the roll is revised and finally published by the revising authority, becomes binding on the Election Courts on question of the voters' qualifications for entry into the roll. In S. R. Lewis V. C. E. Bibbon, Punjab Anglo-Indian Constituency Case. (Doabia Indian Election Cases, Vol. I, P. 239) following the above mentioned three cases, it was held that the Returning Officer

was bound to accept the electoral roll entry as conclusive evidence of the right to stand for election.

18. Other cases to which we may refer are those reported in Doabia's Indian Election Cases, Vol. I, P. 259 and Vol. II, P. 17 and also in Sen and Poddar's Indian Election Cases (1935-51) at pages 75, 352, 388 and 840. In all these cases the view taken consistently has been that the electoral roll is binding and conclusive on the Returning Officer as well as the Election Tribunal in so far as it relates to qualifications of being entered on the roll. The rules then in force in the different provinces as to the preparation of electoral rolls and to the conduct of Elections were not materially different from the provisions now found in the Constitution and the Representation of the People Acts of 1950 and 1951 and the rules thereunder, which have been examined by us above, and we think that the view taken in these cases as to the binding and conclusive character of the electoral roll on the question of the qualifications of the elector to stand for election should also hold good under the law now obtaining. What the tribunal has to find under S. 100(1) (c) of the Representation of the People Act, 1951 is whether there was improper rejection or acceptance of nomination. If being concluded by the electoral roll entry, the Returning Officer was bound to accept the petitioner's nomination, it cannot be permissible for this tribunal to find that his rejection was not improper, by going behind the entry and examining whether the petitioner had fulfilled the requisite residential qualification to be entered in the roll of Talania. By S. 36(7) of the Act of 1951 the entry is made conclusive for the purposes of scrutiny of nominations by the Returning Officer, and it must be accepted as conclusive by the tribunal also to the same extent when the tribunal is considering the Returning Officer's action taken under that section. We do not think that the scope of our inquiry on this point is enlarged by the provision in S. 100(2) (c) (Ibid), under which we may be required to consider "any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election". It is obvious that whether there was any non-compliance as referred to herein must be considered keeping in view the provision in S. 36(7) that for certain purposes the electoral roll entry has to be accepted as conclusive even by the Tribunal.

19. The respondent's counsel relied on the decision of the North Arcot Election Tribunal published in the Gazette of India Extraordinary, dated 20th November, 1952. In that case the name of the petitioner was not entered in the electoral roll on the date of nomination though the revising authority's order had been passed for its entry, and the name was actually put on the roll before the date of scrutiny. The Returning Officer, therefore, rejected the nomination. The Tribunal found that the Returning Officer was entitled to inquire into the circumstance of the absence of the entry in the roll on the date of nomination and that a mere production of a copy of entry subsequent to the filing of nomination would not be conclusive against the Returning Officer on this point. In view of the words 'for the time being occurring in the definition of 'elector' in S. 2(1) (e) it was held that the name should be shown to have been on the roll on the date of the nomination for the elector to be validly nominated. This case does not therefore enunciate a different rule from the other cases above referred to which lay down that where the name of the candidate is on the electoral roll on the date of the nomination the entry is conclusive as to his right to stand for the election.

20. We accordingly find on Issue III that the petitioner's nomination should have been accepted by the Returning Officer and its rejection was improper. We further find that an improper rejection of the nomination raises a presumption that the result of the election is materially affected and this not being shown to be a case in which the petitioner was likely to withdraw from the contest, no evidence could be acceptable to prove that the result could not be materially affected in this case. We have given our detailed reasons for such view in the case of Mathra Dass Vs. Dara Singh decided on 5th March, 1953 and need not repeat them here.

21. In view of the above findings it is not necessary to consider the other parts of Issue No. I. On part (b) of that issue it has already been found that the validity of the registration of the petitioner's name in the electoral roll could not be called in question before the Returning Officer in the scrutiny of the nomination nor can it be called in question before this Tribunal. On Issue II also for reasons already given we find that the rejection of the nomination was improper. On Issue V we must find after the above finding on Issue III that the election has to be declared to be wholly void according to S. 100(1) (c) of the Representation of the People Act, 1951.

22. *Issue IV.*—The respondent No. 1 was, by virtue of his office as Chief Minister of Pepsu State, *ex-officio* Chairman of the Board of Directors of the Bank of Patiala, Patiala Insurance Corporation and Patiala Construction Company. The first two of these are Pepsu Government concerns and the third is one in which Government of Pepsu has partial interest. Though under the Constitution of these concerns some remuneration was payable for these offices, the Government in a letter No. 1420, dated 7th March, 1949, Ex. 1 R-22, decided that when these offices were held by Government Servants *ex-officio* no remuneration would be payable. The respondent was not therefore drawing any fees or allowance for holding these offices in his capacity as Chief Minister. In the circumstances the holding of the offices in these concerns should be treated as part of the duties of the respondent as Chief Minister, and since by virtue of Article 191(2) of the Constitution a Minister is not to be regarded as holder of an office of profit, he could not be so regarded by his acting as Chairman of the Board of Directors of these concerns. Further, we find that the Respondent as a matter of abundant caution had tendered resignation of these offices on 22nd November, 1951 and the Government had communicated their acceptance of the resignation on 23rd November, 1951. There was some doubt as to whether the Government could accept the resignation in respect of the Patiala Construction Company since it was not a Government concern fully. To get over this objection, the respondent had tendered a separate resignation from that body on 23rd November, 1951 and that was accepted by the Board of Directors of the Company the same day. The matter was dealt with expeditiously by the Government and by the Managing Directors of these bodies in order to free the respondent to file his nomination on 24th November, 1951 without being subjected to an objection of disqualification as holder of an office of profit. This is amply proved by the evidence of witnesses P.W. 3 and P.W. 4 on the side of the petitioner and R.Ws. 25, 26 and 27 on the side of the respondent, and in view of this evidence nothing is to be made of the fact that in the Finance Department the letter of resignation dated 22nd November, 1951 was entered in the Receipt Register on 26th November, 1951 as stated by P.W. 5. We should find Issue IV in the negative.

23. *Issue VI.*—We therefore make a declaration for what it may be worth to the parties now, that the election in the Patiala Sadder Constituency of the Pepsu Assembly held in January, 1952 was wholly void. We do not think the petitioner to be entitled to any costs and order the costs to be borne by parties as incurred.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) RAGHUNANDAN SARAN, *Member.*

(Sd.) E. M. JOSHI, *Member.*

The 21st March, 1953.

[No. 19/16C/52-Elec.III/3598.]

**S.R.O. 627.**—WHEREAS the elections of Shri Dandapani Das son of late Benu Das, Bavuri by caste, residing at Purna Berhampur Bavuri Street, Berhampur, Ganjam District and Shri Ramachandra Misra, son of Maheswar Misra, Brahmin by caste, Advocate, Main Road, Berhampur, Ganjam District, as members of the Legislative Assembly of Orissa from Berhampur double-member constituency, have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohan Nayak, son of late Bijuli Nayak, Haddi by caste, residing at Dhannamarra Street, Berhampur, Ganjam District;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, GANJAM-NAYAGARH  
DIVISION, BERHAMPUR (ORISSA).

PRESENT:

Shri Dwarikanath Das, B.A., B.L.—*Chairman.*

Shri R. K. Ratho, M.A., B.L.—*Member.*

Shri G. Krishnamurty, M.A., B.L.—*Member.*

## ELECTION CASE No. 4 OF 1952.

*Tuesday, the 17th day of March, 1953.*

**Shri Mohan Nayak**, son of late Bijuli Nayak, aged 31 years, Haddi by caste, residing at Dhannamarra Street, Berhampur, Ganjam District, P.O. Berhampur, Orissa—*Petitioner.*

*Versus*

1. **Sri Dandapani Das**, son of late Benu Das, aged 23 years, Bavuri by caste, residing at Purna Berhampur Bavuri Street, Berhampur, Ganjam District.

2. **Sri Ramachandra Misra**, son of Maheswar Misra, aged 39 years, Brahmin by caste, advocate, Main Road, Berhampur, Ganjam District.

3. **Gade Narayanamurty**, son of late Sri Gade Raghavarao, aged 50 years, Brahmin, advocate, Main Road, Berhampur, Ganjam District.

4. **Sri Narasinga Sahu**, son of late Chappadhara Sadhu, aged 45 years, Brahmin, Contractor, Hill-Patna, Berhampur, Ganjam District.

5. **Sri Kasinath Padhi**, son of late Bhagavan Padhi, aged 29 years, Brahmin, Cultivator, Jagadapur, Berhampur Taluk, Ganjam District.

6. **Sri Basu Devo Patro**, son of Arjuno Patro, aged 52 years, Daluva by caste, Bus-Proprietor, Bejjipur, Berhampur, Ganjam District.

7. **Sri Bobbadi Appallaswami**, son of late B. Gaddeyya, aged 55 years, (Adi-Andhra Mala) Dambo by caste, residing near Tamayya Tank, Berhampur, Ganjam District.

8. **Sri Mongulu Nayako**, son of Modhu Nayako, aged 48 years, Dandasi by caste, residing at Lati village, Berhampur Taluk, Ganjam District.

9. **Sri Chandru Das**, son of Kannu Das, aged 35 years, Bavuri by caste, residing at Nimakhandi village, Berhampur Taluk, Ganjam District.

10. **Sri Bijoy Chandra Das**, son of Sri Dayanidhi Das, aged 39 years, Karanam by caste, residing at Military Lines, Berhampur, Ganjam District.—*Respondents.*

**Sri B. Gopalaswamy**, Pleader and **Sri M. Seetaramayya**, Advocate for the petitioner.

**Sri R. D. D. Jagannadharao**, Pleader for respondent No. 1.

**Sri G. L. Narasimham** and **Sri R. N. Gantayat**, Advocates for the respondent No. 2.

**Sri Y. S. Ramamurty**, Advocate for the respondent No. 3.

**Sri D. Das**, Advocate and **Sri U. N. Panigrahi**, Pleader for respondent No. 4.

**Sri G. Ramarao**, Advocate for respondent No. 5.

**Sri D. Subudhi**, Pleader for respondent No. 6.

**Sri S. N. Murty**, Pleader for respondent No. 7.

Respondent No. 8 in person.

Respondents 9 and 10.—*Ex parte.*

**ORDER**

This petition filed under Section 81 of the Representation of the People Act 1951 is to set aside the election of respondents 1 and 2, and further for a declaration that the petitioner was duly elected to fill the seat reserved for the member of the scheduled caste and that the respondent No. 3 **Sri G. Narayanamurty** was duly elected to fill the general seat. The prayers made in the petition, therefore, are: (1) that the election of the returned candidates respondents 1 and 2 is void, (2) that the petitioner and respondent No. 3 have been duly elected from the Berhampur Plural Constituency, the former for the seat reserved for the members of the scheduled caste and the latter for the general seat.

2. In Berhampur Plural Constituency, District Ganjam, eleven persons filed nominations out of whom two withdrew namely respondents 9 and 10; out of the remaining nine, five contested for the general seat and four for the scheduled caste seat. Of the five members of the scheduled caste, the petitioners 1, 7, 8 and 9 are the other persons of whom respondents 1, 7 and 8 contested and respondent No. 9 withdrew from the election. The petitioner's case is that on the date fixed for scrutiny i.e., 14th November 1951, he filed a written objection to the acceptance of the nomination of respondent No. 1 **Dandapani Das** on the ground that he was below 25 years of age and that he was also holding an office of profit under the Orissa State Government even on the date of his filing the nomination paper, but

the Returning Officer over-ruled the objection and improperly accepted his nomination. By such improper acceptance of the nomination the result of the election has been materially affected and the election is wholly void. In amplification of what is stated above, it is said in paragraph 7 of the petition that respondent No. 1 was born on 20th June 1928 as would appear from the date of birth mentioned in his application for admission into the Municipal Oriya Middle School by his father on 24th June 1927, secondly the entry in the admission register in the Khallikote College and the entry in the Register of Utkal University and the Service Register maintained by the Police Department where the respondent No. 1 served as A.S.I. of Police. The respondent No. 1 swore to a false affidavit before the Returning Officer stating that he was born on 26th April 1926, that he was the eldest son of his father and that he has only one brother who is younger than him and that he has no brothers or sisters and that he and his younger brother are the only two issues of his father. As a matter of fact, respondent No. 1's father Benu Das had three wives and there was a son born to him prior to the birth of the 1st respondent. Further, the male child born to Benu Das on 24th June 1926, as evidenced by the entry in the Municipal Birth register and which entry has been relied upon by the Returning Officer to accept the nomination of the respondent No. 1 cannot and does not refer to the birth of respondent No. 1. As to respondent No. 1's holding an office of profit, it is said in the said paragraph 7 that even the acceptance of the resignation and the alleged relief and discharge from service are not proper and regular to remove the disqualification thus arising from the holding of an office of profit.

3. It is next said that the election was not a free election and as such is void by reason of the fact that coercion, intimidation and undue influence had been exercised and resorted to by respondents 1 and 2, their agents and other persons with their connivance over the bauri community of Berhampur Constituency. In amplification of this charge in paragraph 9 of the petition it is stated that respondent No. 1 belongs to bauri caste which forms a fairly big community among the electorate in Berhampur Plural Constituency, that respondent No. 2 had agreed to finance the election and to work together with respondent No. 1 as candidates for the Independent Peoples Party with the understanding that all the electors belonging to the bauri caste in the Constituency should be made to give one vote to respondent No. 1 and the other to respondent No. 2. In furtherance of this object a preliminary meeting of the bauris of the constituency was held on or about 12th December 1951 and the final meeting on 20th December 1951 in the tope near the temple of Sri Nrusimha Mahaprabhu in Sukunda village near Berhampur. In the leaflets printed and distributed for the meeting the members of the bauri community were exhorted and incited by many spirited statements, the most pointed one being to the effect that those who would not attend would be treated as enemies of the caste and as people in whose veins the blood of bauris does not flow. In the above meeting respondent No. 1 was chosen as the caste head of the bauri community in the vacancy caused by the death of his father and the bauris assembled at the meeting, among other things, decided and took oath that every member of their community should give one vote to respondent No. 1 and the other to respondent No. 2. As a result of the communal meeting wherein the above decision was arrived at steps were taken for broad-casting the same by propaganda made through the Beharas and Balabhais of the bauri community. It is further said that all the bauris assembled there were fed and that the meeting and feast was arranged by respondents 1 and 2. It is further stated that it was decided at the meeting that those who do not obey the caste mandate would be excommunicated from the caste, socially boycotted and fined. The bauri electors in various villages though they had previously promised to support the Congress candidates namely the petitioner and respondent No. 3, turned round after the meeting held on 20th December 1951 and expressed their inability to keep their former promise and vote for the Congress candidates. The bauri electors in consequence of the meeting and the oath, on the other hand, attended the polls in large numbers and obeyed the caste mandate for fear of ex-communication and social and economic boycott and voted for respondents 1 and 2 who thereupon secured the largest number of votes.

4. It is stated in paragraph 10 of the petition that respondent No. 6 who is a dola by caste, respondent No. 7 who is an adi-Andhra—Dombo by caste, and respondent No. 8 who is a Dandasi by caste, each played upon the sectarian and communal prejudices and thereby prevented the free exercise of franchise by the members of their respective community. Messrs. Gobardnan Mollana and Chakrapani Mollana who are the religious heads of the aruva community, at the request of and with the active connivance of the respondents 1 and 2 used their religious influence over the aruva caste voters and personally coerced on the aruva voters by playing upon their religious sentiments.

5. The corrupt practice of bribery is averred to in paragraph 13 of the petition and after the filing of the written statement by respondent No. 5, a verified petition has been filed by the petitioner adopting the item of bribery referred to in the written statement of respondent No. 5 as the necessary particular in respect of the corrupt practice on that count.

6. In paragraph 14 certain major corrupt and illegal practices alleged to have been resorted to by the respondents 1 and 2 and their agents have been stated, and they are that one Biswanath Sahu of Sunnadel had gathered several village officers and had organised regular campaign against the Congress candidates and in support of respondents 1 and 2 and in pursuance thereof the village officers canvassed and secured votes for respondents 1 and 2; Secondly, the return of the election expenses submitted by the respondents 1 and 2 has omitted to include large expenditure incurred by them, their agents and others, and such expenses are those incurred by Chakrapani Mollana, Gobardhan Mollana, Biswanath Sahu, Basudev Bisoyi, Zamindar of Bodokhemidi, Dibakar Patnaik, Somanath Sahu and Raghunath Sahu sons of Balaji Sahu, Narayana Behara, Dandapani Sahu and M. A. Rauf; and thirdly friends and workers numbering about 1000 were entertained at Mohuri Kaluva on or about 21st January 1952 after the election by respondent No. 2 as consideration, reward and remuneration for their work and assistance to respondents 1 and 2 during the election. The alleged irregularities committed by the election authorities in the conduct of the elections, are stated in paragraph 15 and it is said that at Gopalpur booth and Gurunthi booth, respondent No. 3's ballot box was not placed first and the petitioner's box fourth in order from the left as fixed by the Returning Officer; but there was wrong placing of the said boxes, (2) at Dumidumi booth, the symbol pasted on the respondent No. 3's box was torn and removed for several hours on the second day of the polling, (3) at Kommapalli polling booth the woman assistant placed to help the illiterate and disabled women voters, took the ballot papers into her hand and put them into the boxes on her own choice, (4) the list of polling stations, the date of poll and the particulars relating to the group of villages was given at the last moment and further such list contained several mistakes, for instance, Ralabha placed under Dumi Dumi booth for polling on 4th January 1952 was polled on 1st January 1952 at Konisi booth, (5) the town of Berhampur though originally divided into 19 wards, the voters list for the State Assembly was prepared on an imaginary and not final division of the town into 22 wards, (6) the counting of votes done by batches of clerks deputed was not verified or checked by any one to see that the counting was correct.

7. In conclusion it is said that the petitioner and respondent No. 3 both being good social workers they had every reasonable chance of success in the election if only the election had been conducted on fair lines and if the various illegal and corrupt practices referred to in the petition had not been brought to bear upon the election.

8. The particulars as required by section 83(2) have been given as per the list annexed to the petition. In paragraphs 1 and 2, it is said that the preliminary meeting at Sukunda was held on 12th December 1951 and the final meeting in the afternoon of 20th December 1951 and forenoon of 21st December 1951. All bauris present there were made to take an oath that all electors should go to the polls and cast their votes only to respondents 1 and 2 on pain of ex-communication from caste and economic and social boycott and respondent No. 1 who was elected caste-head also declared in the meeting that a fine of Rs. 25 would be levied in case of default. The village group heads or Beharas were given instructions to convey the threats and coercive mandates to all bauri electors in the various villages of the constituency. Paragraph 5 states that respondent No. 1 and two others went to Bhavanipur, a bauri-inhabited village and intimidated, threatened and coerced one bauri Budhia Das and others and used abusive language when they expressed their desire to support the petitioner's candidature. In paragraph 4 it is stated that the villages mostly inhabited by the aruva community were visited by Gobardhan Mollana and Chakrapani Mollana the two religious heads of Aruva community and the aruvas were threatened and intimidated to vote only for respondents 1 and 2 and not for the petitioner and respondent No. 3. In paragraphs 4 and 6 to 17 of the particulars it has been stated that from 21st December 1951 right up to 4th January 1952 the agents and workers of the petitioner and respondent No. 3 visited the various villages where bauris and aruvas live in majority and came to learn about the mandate issued as a result of the meeting and oath taken by the bauris at Sukunda and also of the coercive mandate issued by the religious heads of the aruva community and were flatly told both by the bauri and aruva electors that they had since changed their mind to vote for the petitioner and the respondent No. 3. In paragraph 18, it is stated that respondents 1 and 2 and their supporters, named therein

threatened the electors with ostracism and induced them to believe that if they voted for the petitioner untouchability and caste distinction will disappear at the instance of the petitioner who was an untouchable. In paragraph 19 it is said that at Surla the Mollana leaders working on behalf of respondents 1 and 2 obstructed the voters going to the polling station by placing a double bullock cart across the pathway and compelled and threatened them to vote for respondents 1 and 2.

9. The respondent No. 1 in his written statement alleges that he was not less than 25 years of age at the date of election. He avers that he was born on 26th April 1926 and that he was the eldest son of his father as affirmed in the affidavit sworn before the Returning Officer. The entry in the birth register dated 26th April 1926 on which the returning officer relied at the time of scrutiny truly and correctly gives the date of his birth. As to the various averments in the petition including the date of birth *viz.*, 20th June 1928, respondent No. 1 states that he is neither in a position to admit nor deny the allegations made by petitioner as he is not in possession of either the original or the copies of the documents adverted to in the petition. He denies that when he filed his nomination paper he was still in Government service and urges that the alleged disqualification arising out of his holding an office of profit cannot be tried as an issue in this proceeding. As to the holding of a meeting of the bauries at Sukunda at the instance of respondents 1 and 2 and their taking oath and issuing mandate through the caste-heads or Beheras to vote for respondents 1 and 2, all that is said is that respondent No. 1's father was the hereditary head of the bauri caste and after his father's death and after he gave up service some respectable persons of the bauri caste of their own accord with the sole object of bettering the condition of the community got a meeting of the caste people convened at Sukunda and there invested him with the insignia of the caste-headship which according to the custom of the caste fell upon him. This meeting had nothing to do with the election for the constituency nor was this fact or incident in any way exploited either by this respondent or by respondent No. 2. No oath whatsoever was taken at any time or at any place nor undue influence of any sort was exercised. Respondent No. 1 in paragraph 9 has stated that he adopts *mutatis mutandis* the written statement of respondent No. 2. In succeeding paragraphs, besides denying the preliminary meeting at Sukunda on 12th December 1951 and the final meeting on 20th December 1951 and also the oath taking at Sukunda, it is also denied that a number of bauri electors in various villages had promised to the petitioner and the respondent No. 3 and their agents to support the Congress candidates in the election and subsequently informed the petitioner and respondent No. 3 their inability to support the Congress. All the elements of undue influence referred to in the various paragraphs of the petition including carrying on of propaganda on communal and sectarian basis and the religious head of the Mollana community influencing the aruva voters by appealing to their religious sentiments are denied. Similarly the various irregularities in the conduct of the election as pointed out in the petition have been denied.

10. Respondent No. 2 Sri Ramachandra Misra is the other contesting respondent. He denies the correctness of respondent No. 1's date of birth as 20th June 1928 as no extract from the register of births showing the entry corresponding to the said date of birth of a son or a daughter to respondent No. 1's father Benu Das either in the year 1925 or 1928 to which years the entry dated 15th September 1925, the date of birth as entered in the Elementary Primary school register or the entry dated 20th June 1928, the date of birth as entered in the Municipal Oriya Middle School register appears. Respondent No. 1 was not holding an office of profit on 10th November 1951 and he had been discharged from service on the forenoon of that day before he filed nomination. It is false that this respondent had agreed to inance the election of respondent No. 1 and that there was an understanding between him and respondent No. 1 that all the electors belonging to the bauri caste in the constituency should be made to give one vote to respondent No. 1 and the other to respondent No. 2. The caste meeting of the bauris at Sukunda either on 12th December 1951 or on 20th December 1951 are not known to this respondent. This respondent or his agents did not attend any such meeting. He further denies that there was any oath-taking at the meeting at Sukunda. The threat of social ostracism and boycott following the oath-taking at Sukunda is absolutely a false story. This respondent is not aware of any candidate or his agent and supporters carrying on propaganda appealing to communal and sectarian sentiments of the voters. Messrs. Gobardhan Mollana and Chakrapani Mollana did not influence the aruva voters being the religious heads of the aruva community. The alleged corrupt and illegal practice and the irregularities pointed out in the petition were never complained of during the time of election and they are purely imaginary and invented for the purpose of this case. Sri Dibakar Patnaik never visited any of the villages in this constituency on behalf of respondents 1

and 2. Sri Biswanath Sahu of Sunadei village was indifferent by 21st December 1951 and never moved to canvass for respondents 1 and 2. As to the particulars attached to the petition each and every one of them is denied by a statement annexed to the written statement.

11. Besides respondents 1 and 2, respondents 3, 4, 5, 6, 7 and 8 have filed counters. Of the above respondents, respondents 3 and 4 are supporting the petitioner. Respondent No. 3's contention is that he would have been and could have been duly elected by a majority of valid votes and also the petitioner but for the fact that the election has not been a free election by reason that respondents 1 and 2 and others resorted to coercion and intimidation and other corrupt practices mentioned in section 100 of the Representation of the People Act. Respondent No. 3 reiterates the various irregularities and illegalities mentioned in the petition and urges that the petition should be allowed and the election of the returned candidates viz. respondents 1 and 2 be declared void and the petitioner and himself be declared to have been duly elected. Respondent No. 4 supports the various averments on the point of coercion, intimidation and undue influence as made by the petitioner. According to him after the meeting at Sukunda on 20th December 1951 the members of the bauri community who had promised to support him turned round and could not keep up their promise for fear of ex-communication, social and economic boycott.

12. Respondent No. 5 files counter stating that respondent No. 9 another bauri candidate was made to withdraw his candidature by respondent No. 1 by offer of a bribe of Rs. 400 and this item of bribery is adopted by the petitioner as a necessary particular to the corrupt practice of bribery alleged by him. This respondent too shall be deemed as supporting the petitioner's case.

13. The counters of respondents 6, 7 and 8 are formal ones and need no specific mention.

14. Respondents Nos. 9 and 10 allow the proceeding to continue *ex parte* against them and no counter has been filed on their behalf.

15. On the contentions of the petitioner and the counter-contentions of the contesting respondents the following issues were framed for determination in the case.

#### Issues.

1. Whether respondent No. 1 was below 25 years of age by 10th November 1951, the date of nomination or he had completed 25 years by then?

2. Whether respondent No. 1 held an office of profit within the meaning of Article 191 of the Constitution and as such disqualified to be a Member of the Orissa Legislative Assembly?

3. Whether the question of disqualification of respondent No. 1 by reason of his holding such office of profit can be agitated in this proceeding?

4. Whether the petitioner can ask for a declaration that respondent No. 3 has been duly elected?

5. Whether there has not been a free election owing to the undue influence, coercion and intimidation of one community or group over another extensively prevailing and materially affecting the result of election?

6. Whether the corrupt practices of bribery and undue influence have been resorted to by respondents 1 and 2 and their agents or by any other person with their knowledge and connivance?

7. Whether the irregularities in the conduct of the election set forth in paragraph 15 of the petition have been committed and whether it has materially affected the result of the election of the petitioner?

8. Whether the return of election expenses given by respondents 1 and 2 are not correct?

9. Whether the election of respondents 1 and 2 is void?

10. Whether either the petitioner or respondent No. 3 is entitled to a declaration that he is duly elected?

11. To what relief is the petitioner entitled?

*Findings:*

16. *Issue No. 1.*—It is alleged that respondent No. 1 Sri Dandapani Das was below 25 years of age by 10th November 1951, the date of nomination and as such was disqualified for being a member of the State Assembly. At the time of scrutiny such an objection was raised by the petitioner as would appear from the objection petition Ex. 2) and the returning officer decided it in favour of respondent No. 1 being satisfied with the proof of age produced and the affidavit sworn before him by respondent No. 1. In this case we have to consider two dates of birth one 20th June 1928 and the other 26th April 1926, the third date of birth *viz.*, 15th September 1925 being not relied upon by either side as the correct one. If 20th June 1928 be taken to be the correct date of birth respondent No. 1 was certainly below 25 years of age on the date of nomination *i.e.*, on 10th November 1951. If on the other hand, the date 26th April 1926 is believed to be the correct date of birth of respondent No. 1, his membership cannot be said to suffer from disqualification arising out of under-age. Respondent No. 1's father late Benu Das got him admitted into the Municipal Oriya Middle School, Berhampur on 24th June 1937 stating the date of birth of respondent No. 1 as 20th June 1928. *Vide* application for admission Ex. 1. The father, Benu Das, made the declaration that the date of birth given in application was accurate and signed his name in Oriya in the space provided therefor below the declaration. In the application for half-fee concession Ex. 2 accompanying the application for admission Benu Das the father also signed his name and described his occupation as cultivation and his annual income as Rs. 60/-. From the Municipal Oriya Middle School a transfer certificate was taken on 23rd June 1942 and Dandapani Das respondent No. 1 personally received the same. *Vide* Ex. 3-a. After obtaining the transfer certificate he read in the Khallikote Collegiate High School, Berhampur, till 7th March 1947 as evidenced by the transfer certificate Ex. 6 and thereafter he sat for the University Examination for Matriculation, as evidenced by the application for University examination Ex. 8 and the marks obtained by respondent No. 1 in the University Examination—*vide* the marks-sheet Ex. 7. In the application for admission, in both the transfer certificates and in the application for the Matriculation examination the date of birth of respondent No. 1 as entered is 20th June 1928. In a line with the above statement about the date of birth respondent No. 1 made statements about his age as 20 years in May 1948 when he made an application for membership in the Co-operative Urban Bank, Berhampur—*vide* application Ex. 10. Respondent No. 1 applied for a loan from the Urban Bank after being a member and in the affidavit Ex. 13 sworn by him for the loan he stated his age as 20 years evidently referring to the date of his birth as 20th June 1928. Consistent with the statement of age made as above the age given in the mortgage bond Ex. 14 executed by respondent No. 1 on 28th May 1948 is 20 years and that age 20 years also finds place in the surety bond Ex. 16, executed simultaneously with the mortgage bond. Later in 1948 respondent No. 1 applied for service in the Police Department and in the Service Register Ex. 18 the date of birth given is 20th June 1928. In the Medical History Sheet Ex. 41 and in the Verification Role Ex. 39 attached to the Service Register the same date 20th June 1928 has been carried over. Respondent No. 1 in his statement before the Tribunal seeks to avoid the presence of the father at the time of his admission into the Municipal Oriya Middle School by saying that he cannot identify the signature of his father in Exs. 1 and 2. He speaks of one Padmacharan Patnaik, a private tutor having escorted him to the school at the time of the admission and the said Padmacharan Patnaik being dead in the course of 2 or 3 years. The father Benu Das having signed in Oriya in the application for admission and the application for half fee concession and the father of respondent No. 1 being admittedly alive till 5 or 6 years ago we are inclined to believe that Benu Das got respondent No. 1 admitted into the Municipal Oriya Middle School and must have made a statement about the date of birth of respondent No. 1 as 20th June 1928, and that he signed the two applications knowing the contents thereof. To dispute the correctness of the date of birth as 20th June 1928 appearing in the above series of documents and to assert that 26th April 1926 is the correct date of birth of respondent No. 1, it is argued by his lawyer that the date 20th June 1928 is not corroborated by any entry on the said date in the Municipal birth register as has been deposed to by R.1 W.24 Krishna Chandra Patra. Secondly, it is argued that in disproof of the fact that respondent No. 1 was born on 20th June 1928 the registers of the Municipal Oriya Elementary School, as produced in this case *viz.*, (1) Teachers' Attendance Register, (2) Pupils Admission Register, (3) Pupils attendance register, (4) Progress and Conduct register and (5) Progress Register and marked Exs. O.P.Q.R.S. respectively should be looked into as respondent No. 1 Dandapani Das began his primary education in the Elementary School, Berhampur and just after taking transfer from the said school he joined the Municipal Oriya Middle School on 24th June 1937. So far as the absence of any entry dated 20th June 1928 in the Municipal birth register showing birth of any child

to Benu Das the father of respondent No. 1, R.1 W.24 Krishna Chandra Patra himself has stated the circumstances under which the entries in this register are made. He has deposed that a direct information when received is entered here first hand and the information received through other agencies are noted down afterwards. He has further deposed that informations which are not complete are not entered till all the details are received after due enquiry and if all the informations are not available the birth of any particular child is not entered in this register. The absence of an entry dated 20th June 1928 in the Municipal birth register by itself does not, therefore, disprove the correctness of the date of birth 20th June 1928. What is material for consideration are the various registers of the Elementary School. At the outset it must be said that the date of birth of respondent No. 1 appearing in the admission register Ex. P is 15th September 1925. Vide entry Ex. P. 1. The date 15th September 1925, according to respondent No. 1 himself is not the correct date and the correct date of birth should have been entered as 26th April 1926. To get at the correct date of birth of respondent No. 1 the registers of the Elementary School more particularly the admission register Ex. P is thus of no help. Much has been sought to be made of the fact that one Dandapani Das son of Benu Das was a student in the Elementary School between 5th October 1933 the date of admission and 23rd June 1937 the date of his taking transfer certificate as evidenced by the entry in the admission register Ex. P. 1 and the entry in the progress and conduct register Ex. R. 1 respectively, the evidence of the two teachers of the Elementary School P.Ws 22 and 23 who speak of respondent No. 1 Dandapani Das being a student in the school, the evidence of P.Ws 28, 29 and 30 who speak of respondent No. 1 Dandapani Das being their classmate in the Elementary School to urge that respondent No. 1 Dandapani Das before joining Oriya Middle School on 24th June 1937 was reading in the Elementary school up to 23rd June 1937. The application for admission made to the Municipal Oriya Middle School Ex. 1 shows that Dandapani Das respondent No. 1 joined the Middle School after private study. The entry of Dandapani Das's name in the Historical Register (C) Ex. 9(C) then maintained under the Madras Education Rules is also a fact consistent with his private study as we get it from the evidence of the assistant Head Master P.W. 3. Apart from the question that respondent No. 1 Dandapani Das joined the Middle School after private study or after taking transfer certificate from the Elementary School, as already said, the Elementary School registers do not show the date of birth of the said Dandapani Das as 26th April 1926; but instead shows 15th September 1925 which admittedly is not the date of his birth. It has been sought to be argued that the entry of date of birth of a particular student as made in the school register is not to be strictly adhered to as the date of birth of the petitioner given in the Historical Register (B) Ex. A is 1st June 1923; but according to his own saying he was born in 1921. The respondents to counteract the effect of the entry of the date of birth 20th June 1928 relied upon the various registers of the Elementary School and they cannot now go against their own documents to say that the dated of birth 15th September 1925 as entered therein is an incorrect date and the correct date should have been 26th April 1926. Anyway, suffice it to say that the registers of the Elementary School as they stand do not help the respondents to treat the date 20th June 1928 as an incorrect date. To improbabilise the petitioner's case that respondent No. 1 was born on 20th June 1928 reference is made to the remark of the Inspecting Officer appearing in the admission register of the Elementary School Ex. P. 2 where instruction to the effect that boys below 6 years in age and girls below 5 cannot be admitted. What is sought to be shown from the remarks is that Dandapani Das respondent No. 1 if born in 1928 would be less than six years at the time of his admission in 1933 and as such was not fit to be admitted into the Elementary School whereas his birth in 1926 or even in 1925 as entered in the Elementary School register would entitle him to admission. Sri Param Patra R.1 W.26 Retired Sub-Inspector of Schools who has proved the remark Ex. P. 2 has also said that the rule restricting the admission of boys and girls on the ground of age into the Elementary School not being observed, the remark was made. This shows the flexibility of the rule fixing the minimum age of the boy as six years and that of the girl as five years in the matter of admission into the Elementary School. The mention of the date of birth 20th June 1928 as made in the register of the Municipal Oriya Middle School on 24th June 1937 and the subsequent carrying over of the said date in the register of the Khallikote Collegiate School, register of the Utkal University and the Service Register maintained by the Police Department are next attempted to be explained away as either not representing the correct state of things or done purposely with the object of reducing the age of respondent No. 1 to enable him to enter government service even after his exceeding 25 years by the time he finishes his study. The father Benu Das himself got respondent No. 1 admitted into the Middle School and he signed the declaration on 24th June 1937. It would appear that Benu Das was an Oriya knowing man as can be seen from the signing of his name in Oriya but that does not carry the impression that the

declaration as to the accurate date of birth was made without understanding the full import thereof as said Benu Das was a literate man with annual average income of Rs. 60/-. It has been seen how respondent No. 1 Dandapani Das has evaded to admit his father's signature appearing in the application for admission Ex. 1 and the application for half-fee concession Ex. 2 by saying that he was escorted to the Middle School by his private tutor one Padmacharan Patnaik. Respondent No. 1's being escorted to school by one Padmacharan Patnaik and the said Patnaik making statement as to the date of birth is altogether to be discarded from consideration as the signatory to the two applications is respondent No. 1's father Benu Das himself. If it is held that the father Benu Das accompanied respondent No. 1 to the Municipal Middle School the inference to be drawn is that the statement about the date of birth as made in the Municipal Middle School register represents the correct state of things. Coming to the other aspect of the matter *viz.*, reducing the age for the purpose of service we do not find any such case set up by respondent No. 1 in his written statement. The respondent No. 1 in paragraph 6 of his written statement while asserting that the date 26th April 1926 is the correct date of birth has stated that he is not in a position to admit or deny the allegation made by the petitioner on the point and the petitioner is put to strictest proof. Respondent No. 1 could have very well said that his date of birth was advanced to 20th June 1928 for the purpose of securing government service as is sought to be maintained by his advocate but no such case has been attempted to be made in the written statement. In the evidence respondent No. 1 has started making out a new case altogether. He has condemned his statement in paragraph 6 of his written statement that he is neither able to admit nor deny the petitioner's allegation as an unfortunate statement and he knew at the time he filed the application for Matriculation Examination that the date of birth was wrongly entered in the school register. He has also answered to the query of Sri Ratho, one of the Members of the Tribunal by saying that he had doubt about the correctness of age when he made the application for matriculation examination and he allowed the doubt to remain till 14th November 1951 *i.e.*, the day of scrutiny. The above statement of respondent No. 1 can hardly fit in with the argument of his learned advocate that with a view to reduce the age of respondent No. 1 the father Benu Das made a false declaration as to the date of birth in the Municipal Oriya Middle School particularly when such a case has not been made out by respondent No. 1 in the written statement.

17. To establish 26th April 1926 as the correct date of birth of respondent No. 1 still greater emphasis has been put on the birth register entries Ex. T series and the entries in the vaccination registers Ex. U series. Ex. T is the entry in the birth register dated 6th December 1918 regarding the birth of a daughter to Benu bauri Ex. T. 1 of 1921 regarding the birth of another son Ex. T. 2 an entry dated 28th September 1923 regarding the birth of a male child to Benu bauri, Ex. T. 3 an entry dated 26th April 1926 regarding the birth of a male child to Benu and Ex. T. 4 an entry dated 22nd January 1933 regarding the birth of another male child to Benu. It is the entry Ex. T. 3 which is relied on respondent's side to urge that the third child born to Benu Das was a son and the said son is respondent No. 1 whose birth according to the birth register entry is dated 26th April 1926. If the entry Ex. T. 3 is considered independently it has no effect as it does not mention the name of respondent No. 1 Dandapani Das. It has, therefore, got to be read in the context of respondent's oral evidence. On the point of birth of children to Benu Das, besides respondent No. 1 who is R. 1 W. 34, two witnesses have been examined to depose about it and they are R. 1. W. 31 Gobinda Panigrahi and R. 1. W. 32 Lokanath alias Loka Das. We get from R. 1. W. 31 and 32 that Benu Das had married three wives, the first wife Badani gave birth to a daughter named Sabitri and two male children, that the daughter is alive and the two male children are dead, that the second wife Hadiani left Benu Das after living with him for two months and had no issue and the third wife Baldel gave birth to a male child nearly 18 months after she came and joined Benu Das, and at an interval of such period from the death of the second male child born to Benu Das through the first wife, that the second male child born to the third wife was seven years after the birth of the first child and the third male child was born ten years after the birth of the second. What the two witnesses mean to say is that Sabitri the daughter born to the first wife is to be taken as the female child born to Benu Das as per the entry Ex. T. 1 in 1918, the two male children born to the first wife are to be connected with the entries Ex. T. 1 and T. 2 which are of the year 1921 and 1923 and the respondent No. 1 who is the first male child born to the third wife is to be connected with Ex. T. 3 dated 26th April 1926. R. 1 W. 31, though a Brahmin gentleman, poses to be conversant with the affairs of the family of respondent No. 1 who is bauri by caste. That apart, his evidence regarding the birth of three children to the first wife Badani is said to be based on the fact that the mother used to come to work in

his field with her children—a fact which sounds uncommon. The first wife of Benu Das might be a poor lady to go to the field to work with children, but it is too much to expect that all the three children born to her were taken to the field of R. 1. W. 31. R. 1. W. 31's son-in-law Harichandra is the younger brother of Dandapani Sahu who was the election clerk of respondent No. 2. He admits that he has been watching the proceedings in this case. It is natural that R. 1. W. 31 would make statements which would go to favour the contesting respondent. This witness further has deposed that Benu Das, his brother Loka Das R. 1. W. 32 and his father were having joint bhag cultivation of lands of a muth and in the course of the last 7 or 8 years such cultivation, as joint bhag tenants has ceased. The muchilkas admittedly do not show the name of Benu Das as joint bhag tenants. Respondent No. 1 the son of Benu Das does not refer to joint bhag cultivation with Gobind Panigrahi R. 1. W. 31 or his father. He, on the other hand, speaks of his father cultivating much land jointly with his paternal uncle R. I. W. 32 and since the father's death, the land being in their exclusive cultivation through his mother. The falsity of R. 1. W. 31's evidence is further proved from the fact that though he is working as an employee abroad in the Endowment Department for the last 29 years still he says that he attended the field to see who were the labourers engaged and thus he came in direct contract with Benu Das's wives and their children. Coming next to the paternal uncle Loka Das, R. 1. W. 32, his evidence though in a line with that of Gobinda Panigrahi so far as Benu Das's marrying three wives and the said wives giving birth to children at the intervals stated, he fails to give the age of respondent No. 1 Dandapani Das or of his younger brother Raghunath. If the paternal uncle was in direct touch with respondent No. 1's family, one would expect him to state the age of respondent No. 1 and that of Raghunath the younger brother. The statement of R. 1. W. 32 that Boidei, the third wife gave birth to a male child first 18 months after her joining Benu Das and her giving birth to a second male child after an interval of seven years and the said two children being respondent No. 1 and Raghunath respectively, therefore, has very little weight. This Loka Das is highly interested in respondent No. 1 and he admits that he helped him with cash of Rs. 75/- in the last election and he won't get back the amount. In his anxiety respondent No. 1 he goes the length of saying that respondent No. 1's third brother Bhaskar aged 9 years was adopted by the widow of Jhata 15 years back i.e., even when the boy was not born. He further has said that Jhata died 17 years back and his widow left the house 15 years back; but still Bhaskar aged 9 years was adopted by Jhata's widow. It remains to be seen how far respondent No. 1 i.e., R. I. W. 34 has fared on the point that he was the eldest son of the third wife born to his father Benu Das. In connection with the objection petition filed before the Returning Officer an affidavit Ex. 22 was sworn by respondent No. 1. The affidavit states that respondent No. 1 has only one other brother who is younger to him aged 21 years and he has no other brother or sister. It further states that except two male children no other male child was born to respondent No. 1's parents. The affirmation made in the affidavit are admitted to be true in paragraph 6 of the written statement. Respondent No. 1 who is R. 1. W. 34 has given a complete go-by to the affidavit in his examination in chief. Respondent No. 1's statements in the examination in chief on the point are as follows:—The statement that

"I am the eldest son of my father is not wholly correct as I am the eldest son of my father through my own mother ..... The Statement that I have only one younger brother aged 21 years is not correct inasmuch as my younger brother was 19 years..... The statement that I have no brother or sister is incorrect in its entirety as I have another brother and sisters too ..... The said brother has been given away in adoption and under that impression I have stated that I have no other brother ..... Absence of sister is to be explained as there is no daughter born to my mother through my father ..... The statement that except we two brothers no other male child was born to my parents is incorrect to the extent that it omits the third brother who was given away in adoption".

The respondent No. 1 affirming certain facts in the affidavit and further admitting in his written statement that the statements made in the affidavit are correct cannot possibly make such different statements in evidence, unless it be done for the sole purpose of fitting in the birth register entry Ex. T.2 dated 26th April 1926 as the date of his birth. It is said by respondent 1 that he swore the affidavit Ex. 22 after referring to the entry in the birth register, but this fact is certainly against the truth of the story as on a reference to the birth register respondent No. 1 would have been appraised that besides himself and the younger brother there was one sister and the difference of age between him and the younger brother was not five years (as would appear on calculation between the date of

birth of respondent No. 1 and the younger brother's age given in the affidavit) but was seven years. If we connect the younger brother of respondent No. 1 referred to in the affidavit as the son born on 22nd January 1933 and respondent No. 1 as the male child born on 26th April 1926, the age of the younger brother given in the affidavit automatically stands reduced to 19 years. Respondent No. 1 in his cross examination has also clarified the matter in the line above discussed where he has said as follows:—

"It is not true to say that I knew the difference of age between me and Raghu was five years when I swore the affidavit Ex. 22. Raghu's age given in Ex. 22 as 21 years is incorrect. Then I did not know the difference of age between me and Raghu".

If we are to believe respondent No. 1 that he did not know the difference of age between himself and Raghu a twofold hurdle comes in the way of respondent No. 1. One is that he swore an affidavit falsely in respect of the younger brother's age and the second is that he did not at all refer to the birth register before swearing the affidavit. Next, we come to the third living brother of respondent No. 1 whose name is Bhaskar and regarding whose birth no entry has been proved. According to the statement in the examination-in-chief Bhaskar was given away in adoption and under that impression the statement in the affidavit omits to make mention of the third brother namely Bhaskar. The adoption story is a cock and bull story as the paternal uncle Loka Das R. 1. W. 32 has told us that Jhata's widow even after remarriage adopted Bhaskar on behalf of Jhata as according to the said witness Jhata died 17 years back and his widow remarried 15 years back and the boy alleged to have been given in adoption is only aged nine years. Gobind Panigrahi R. 1. W. 31 speaks to Bhaskar's adoption in the course of five or six years which too means that after remarriage the widow took the boy in adoption on behalf of Jhata. There are clear admissions in the evidence of respondent No. 1 both oral and documentary that notwithstanding Bhaskar's adoption, the joint family consists of respondent No. 1 and the adopted brother Bhaskar. To refer to the documents they are Exs. 12, the collateral security application, Ex. 13 affidavit, filed in connection with the loan, Ex. 14 mortgage bond executed in favour of Berhampur Urban Bank. Suffice it to say that respondent No. 1 really had two younger brothers one Raghunath and another Bhaskar and the story of adoption of Bhaskar is a myth. In this connection it is also to be noted that on respondent No. 1's own admission Bhaskar's adoption has been omitted from the written statement. Last we come to the sister. The affidavit states that respondent No. 1 has no sister, while existence of sister is deposed to in evidence though omitted from the written statement by the respondent No. 1. Thus considering the evidence of respondent No. 1 side by side with the affidavit Ex. 22 in regard to the diversity of statements made on the above facts any Court of Justice would disbelieve respondent No. 1 just as the other two witnesses have been disbelieved. The best witness to connect the birth register entries would have been the mother of respondent No. 1 who is alive. For reasons best known to the respondent and in spite of the matter having been brought to the notice of the advocate for respondent No. 1 by us, the mother has not been examined though after the father's death the mother is executing yearly muchilkas in respect of the muh land held by the respondent on bhag. It is sought to be suggested in argument that respondent No. 1's mother is not in a fit state of health to depose; but all that we get from Gobind Panigrahi R. 1. W. 31 is that the mother is deaf. As already said the mother is executing yearly muchilkas and the deafness alone cannot be such a factor as to disable the woman from coming to the witness box and giving her deposition. Attack is sought to be made referring to the petitioner's evidence that he too has come to Court without sufficient enquiry as to how many sons Benu Das had and if really respondent No. 1 was born in 1928. This is nothing but a baseless attack as the respondent has come to court without the best possible witness namely the mother. In this connection one important fact cannot be lost sight of. Respondent No. 1 has kept a space of five years as between his age and the age of his younger brother Raghu as evidenced by the collateral security application Ex. 12 and the affidavit sworn before the Returning Officer Ex. 22. According to the argument of the petitioner's lawyer the space of five years automatically gets disturbed if 1926 is taken as the year of respondent No. 1's birth and Raghu's birth is put in 1933 as per the birth register entry Ex. T.3 and T.4 respectively. To avoid criticism respondent No. 1, therefore has begun saying in cross-examination that the difference of five years as sworn in the affidavit Ex. 22 is a mistake for the difference of seven years as then he did not know the difference of age between him and Raghu. It is hard to believe that the difference of age between two brothers would not be known to a brother. What seems probable is that to fit in with the two birth register entries Exs. T. 3 and T.4 of the years 1926 and 1933 respectively the difference of age is sought to

be changed from five years to seven years. Rejecting the improvement thus attempted to be made in the matter of difference of age between respondent No. 1 and Raghu, the petitioner's version of respondent No. 1's birth in 1928 June, Raghu's birth in January 1933 is the only version that stands considering the difference of age between the two as one of five years.

13. Having considered the birth register entries Ex. T. series in the context of the oral evidence led on respondent's side we now come to consider the probative value of such entries. In the entries reference is no doubt made to the children of one Benu Bauri: but there is nothing to connect respondent No. 1's father Benu with the said Benu except the caste Bauri. Respondent No. 1's father Benu as we have seen is described as a householder in the application made for the admission of respondent No. 1 in the Middle School. But Ex. T.3 which is the relevant entry for the purpose of this case shows that Benu was a cooly. R.1. W.24 Krishna Chandra Patra has proved various entries including Ex. T.3. He has no personal knowledge about the entries as admitted by him. According to the evidence the signature or the mark of the informant is necessary to be put in Col. 16 of the register. Against Ex. T.3 we find a note that one Syama Ghana was the informant. This Syama Ghana is said to be R.1. W.27. The witness Syama Ghana was first living in Bejpur and now lives in Berhampur near Zanana Hospital. The informant Syama Ghana was a man of Bhapur as Col. 17, shows. The witness Syama Ghana used to put his signature in the birth register when conveying the information and on one occasion he remembers to have reported about the birth of a son to Benu Das between 1922 and 1927. As the entry in Col. 16 against Ex. T.3 stands, the informant Syama Ghana did not sign his name. R.1. W.24 has told us that the informations which are not complete are not entered till the details are received after due enquiry and if all informations are not available the particulars of a particular child are not entered at all. This being the state of things in regard to the entries and Syama Ghana R.1. W.27's signature being not put against the birth of the male child to respondent No. 1's father Benu in 1926 in Ex. T.3 which however is the practice with the witness Syama Ghana no sanctity can be attached to the entry Ex. T.3 to connect it with the birth of respondent No. 1. Side by side with the birth register entries, the entries in the vaccination register are to be considered and the corresponding vaccination register entry in respect of the birth of a child to Benu in 1926 is Ex. U.2. Ex. U.2 really speaking is not the vaccination register but the register of unprotected children, as the entry in the vaccination register is referred to against the Serial No. of the boy. Whatever that may be, Ex. U.2 is not the vaccination register as the number in the vaccination register is 569 and the same is referred to against the Serial No. 362 relating to Benu's son born in 1926. R.1. W.25 in his cross examination has admitted that besides the register wherein Ex. U series appear there is the vaccination register and a number is given to each and every case and that number again is put against the entry in the birth register. Like R.1. W.24 he is a formal witness to prove the entries Ex. U series and he has no personal knowledge. In the year of law an entry in the birth and death register does not prove itself and the persons who made the entry or gave information about the entry must come forward and speak to the entry and further connect the same with the individual concerned. This is what has been laid down in the case of Bisweswar Misra King reported in A.I.R. 1949 Orissa page 22. In the Calcutta decision reported in A.I.R. 1938 Calcutta page a similar view has been expressed where it has been laid down that the entries of the names of persons in a register of births or deaths or marriages cannot be positive evidence of the birth, death or marriage of such marriage unless their identity is fully proved. On respondent's side reliance is sought to be made on 41 Madras page 26 which is said to run counter to the above decision; but the Madras decision does not anywhere say that the identity of the person connected with the entry in such registers is not necessary to be established. Anyway, without the vaccination register where we could have got the name of the son born to Benu Das in 1926, we are not prepared to attach very much importance either to the birth register entries or to the entries in the unprotected children register. It is sought to be maintained in respondent's argument that the corresponding vaccination register of the relevant year 1926 is not available, but such a fact is not brought out in the evidence of the vaccinator R.1. W.25.

19. Before we leave this topic we feel called upon to refer to the admission made by respondent No. 1 till the time he swore the affidavit Ex. 22 that his date of birth was 20th June 1928. If respondent No. 1 as he wants us to believe knew that he was born on a date prior to 20th June 1928 or at least had suspicion that he was born not on 20th June 1928 but before that date, why did he allow that mistake to continue till the date he filed the affidavit Ex. 22, on 14th November 1951. Respondent No. 1's evidence in the box on the point has been that from the time of the matriculation examination in 1948 he had reason to suspect that

he has been shown as aged less than what he really is. At least at the time he made up his mind to stand for the election he got private information though his friend Dhaneswar Sahu from the municipal office that the year of birth was 1926 and not 1928. Why was no attempt made to amend the date of birth from 1928 to 1926? Respondent No. 1 has no explanation to give except repeating the fact that he allowed the doubt to remain till he swore the affidavit on 14th November 1951. The effect of respondent No. 1's admission has got to be considered here. What a party himself admits to be true may reasonably be presumed to be so. Until this presumption is rebutted the fact admitted must be taken to be true. Referring to that principle their Lordships in the case of *D. Veeraragob Reddi Vs. D. Kamalamma* and another reported in *A.I.R. 1951 Madras 403* held that the admissions by the mother who denied the adoption would have been binding upon her but for the fact that she had offered reasonably acceptable explanations of her statements. Here in the absence of any explanation by the respondent No. 1 as to why he relied upon the date 20th June 1928 all through, the onus which by reason of admissions had been shifted on to him stands unrebutted. The respondent's lawyer here urges that the onus of proving that the candidate was less than 25 years of age at the time of nomination was on the petitioner referring to the decision of the Election Tribunal in the case of *Ch. Pratab Singh Vs. Nebal Singh* reported in *India Gazette No. 17*, dated 17th January, 1953. In this case Bhiku Ram the scheduled caste candidate though not returned and though came as a petitioner's witness was alleged to be below the qualifying age and his nomination was improperly accepted for the purpose of setting aside the election. The Tribunal held that the petitioner could have secured corroborative evidence of the correctness of the school register entry by producing the register of births particularly when Bhiku Ram gave evidence for the petitioner in a partisan spirit. Further, the Tribunal found that the petitioner had not objected to Bhiku Ram's age before the Returning Officer but had taken advantage of the inaccurate record of date of birth in the school register after the election was over. With these findings the Tribunal held that the petitioner had failed to make out a case of improper acceptance and that the onus of proving that Bhiku Ram was less than 25 years of age at the time of nomination was on the petitioner. The next decision referred to on the respondent's side is the case of *Attar Singh* reported in *India Gazette No. 34*, dated 5th February, 1952. This decision is cited to show that the date of birth of respondent No. 1 as 20th June 1928 even though repeated from the time of respondent No. 1's admission in the municipal Middle Oriya School up to the time of his filing the nomination paper would still stand as an erroneous date and its oft repetition would not give any added strength to its evidentiary value. In this case Attar Singh in his own evidence had explained that when he thought of standing for election, he looked for accurate evidence of his birth date and got it in the register of births of his village as 24th January 1926. It is this evidence of the respondent Attar Singh on which the Tribunal felt satisfied that the gentleman was born on 24th January 1926 and not on 1st May 1927, the date entered in the school register and also not on 16th January 1924 the date appearing in the register of Primary School. Here as already discussed at length, respondent No. 1 has prevaricated himself hopelessly and has never cared for making a true and correct statement. Besides the birth register entry in this case is anything but decisive as roving attempt has been made to connect respondent No. 1's birth with the son born to one Benu Das on 26th April, 1926. Another decision of an Election Tribunal referred to on respondent's side on the point of age is the case of *Bhika Trimbak Pawar* reported in *Gazette of India* dated 17th December 1952. In this case the entry in the primary school register based on the father's certificate of age was superseded by the extract from the birth register and vaccination register. Here we have neither the satisfactory birth register entry nor the vaccination register entry. To conclude, on an appreciation of evidence led by both the parties in this case and having in view the admission of respondent No. 1 about the date of birth *viz.*, 20th June 1928 and lastly considering the fact that the father when alive made the declaration in the Municipal Oriya Middle School that the date of Birth of respondent No. 1 was 20th June 1928 and the mother, though alive, is withheld from the witness box without any justifying excuse, we have no other course left to us but to hold that respondent No. 1 was born on 20th June 1928 and at the time of nomination *i.e.*, on 10th November 1951 he was below 25 years of age.

20. Issue Nos. 5 and 6.—The exercise of undue influence, coercion and intimidation by one community or group over another community or group as adverted to in the issue has pointed reference to the caste meeting of the bauries at a place called Sukunda within Berhampur constituency. Respondent No. 1 Dandapani Das is a member of the Bauri community and he has been elected for the

scheduled caste seat in the Berhampur constituency. The petitioner's case is that the (the petitioner) and respondent No. 3 who was a candidate for the general seat, as good social workers had every chance of being returned having been assured of large number of votes by the electors including bauri voters. On 12th December, 1951, there was a preliminary meeting of the bauries of the constituency at Sukunda and as resolved therein the final meeting was held there in the tope near the temple of Nrusimha Mahaprabhu at Sukunda on 20th December, 1951. Printed leaflets for the meeting were distributed among the bauries who were exhorted to attend the meeting in large numbers and further were warned that the absentees would be treated as enemies of the caste and as people in whose veins the blood of bauris did not flow. In the meeting respondent No. 1 was chosen as the caste head of the bauri community and next day i.e., on 21st December, 1951 in the morning the bauries who had assembled took oath before the deity that every member of the community should give one vote to respondent No. 1 and the other to respondent No. 2. The above decision was communicated through the Beheras and Bhalabhais of the community who were asked to propagate the caste mandate. It was also decided in the said meeting that those who would not obey the caste mandate would be ex-communicated from the caste, socially boycotted and fined. As a result of the communal meeting, the decision arrived at therein, and the oath taken there and propagation of the caste mandate, the bauri electors though had previously promised to support the Congress candidates viz., the petitioner and respondent No. 3 turned round and expressed their inability to keep their promise and vote for the Congress candidates. The bauri electors on the other hand, attended the polls in large numbers and obeyed the caste mandate for fear of ex-communication, social and economic boycott and voted for respondents 1 and 2 at whose instance the meeting was convened.

21. Respondent No. 1 Dandapani Das admits that he was made the caste-head in the vacancy caused by the death of his father in the meeting held at Sukunda on 20th December, 1951; but he disputes the fact that there was the preliminary meeting on 12th December, 1951 and the final meeting on 20th December, 1951 which continued till the meeting of 21st December, 1951 when the alleged oath was taken. He further disputes that the meeting at Sukunda on the 20th was convened at his instance or at the instance of respondent No. 2 and that they two had entered into any sort of agreement either financial or otherwise for the convening of the said meeting. According to respondent No. 1 after the death of the father who was the hereditary head of the Bauri caste, the headship did not devolve on him as he was then holding government service. After his giving up the service some respectable persons of the bauri caste of their own accord and with the sole object of—bettering the condition and interest of the bauri community got a meeting of the caste people convened in which he (respondent-1) was invested with the insignia of caste-headship. This ceremony of investiture held on 20th December 1951 has not in any way been exploited either by him or by respondent-2 or by any of their agents or any person with their connivance or knowledge for inducing the voters or inducing the voters or procuring their votes.

22. Respondent-2 pleads complete ignorance of the caste meetings of the bauris both on 12th December 1951 and 20th December 1951 and denies that he ever met the expenses and charges for the alleged meetings. He also denies that every member of the bauri community present at the meeting took oath to give one vote to respondent-1 and the other to him. Lastly, it is denied that the bauri electors had attended the polls in large numbers being bound by oath and under fear of ex-communication and fine.

23. People bauri caste form a large section of the electors in Berhampur constituency as the very evidence led by respondent-1 goes to show. R. 1. Ws. 1 and 2, men of Ralabha, R. 1 Ws. 3 and 6, men of Kalabigam, R. 1 Ws. 4 and 5 men of Hinjalapalli R. 1 W. 7, a man of Haladiapadara, R. 1 W. 8, a man of Bakshipenta, R. 1 W. 9, a man of Mansoorokote, R. 1 W. 10, a man of Badapur, R. 1 W. 11, a man of Antarbatia, all have stated that in their respective villages the bauris are in majority among the Harijans i.e., the scheduled castes and all these villages come under the Berhampur constituency. The first controversy raised is, if the Berhampur constituency is to be read as synonymous with Mohuri Taluq, mentioned in Ex. 28, the printed leaflet which was admittedly distributed in regard to the meeting held at Sukunda on 20th December 1951. Respondent-1's advocate wants to read into the expression "Mohuri Taluq" the meaning "Mohuri Ghadakeswar Mutha" comprising of only 16 villages including Purna—Berhampur the village of respondent-1. As we get from the evidence in the case, under Mohuri Taluq there are 10 or 11 Muthas and Mohuri Ghadakeswar Mutha or Mohuri Mutha (as it is also called) is one of them. There is no dispute over the fact that Berhampur Constituency is co-extensive with Mohuri Taluq as understood with regard to the

Muthas or groups of bauri villages comprised thereunder. The point, as already said, is what is meant by the term "Mohuri Taluq" mentioned in Ex. 28. That is, if the bauris of Mohuri Ghadakeswar Mutha were invited to attend the meeting or the bauris of the entire Mohuri Taluq comprising of so many Muthas were invited. To show that the bauris of entire Mohuri Taluq i.e., of Muthas other than Mohuri Ghadakeswar Mutha were not called to the meeting R.1 Ws. 1 and 2 who are men of Ralabha, 3 and 6 who are men of Kolathigam, 4 and 5 who are men of Hinjalapalli, 7 of Haladiapadara, 8 who is of Bakshipenra, 9 who is of Mansoorokote, 10 who is of Badapur and 11 who is of Antarbatia have been examined. The above RWs have deposed that as residents of the villages mentioned against each of them, they polled their votes in the various polling booths under the Berhampur constituency, and they do not know anything about the meeting convened for conferring the headship of Mohuri Ghadakeswar Mutha. R. 1 Ws. 12 and 13 of Randa, 14 and 15 of Bendalia, 16 and 17 of Jugidi, 17 of Panchama, 18 of Sunnadei, and R. 1 W. 33 of Purna-Berhampur on the other hand have been examined to say that the meeting held at Sukunda was attended by them as men of the 16 villages comprised under the Mohuri Ghadakeswar Mutha. They further have deposed that R. 1 W. 33 Sanya Bhalabhai, surrendered the headship of the Mutha, and respondent-1 Dandapani Das was made the head of the Mutha according to customary practice of investiture. It is both parties case that Dandapani Das was made the caste-head in the meeting held at Sukunda on 20th December 1951. What is material for consideration is if the headship conferred on respondent-1 at the meeting was the headship of the entire bauri community of the Taluq and as such undue influence was sought to be exercised over the bauris of the entire Taluq. For the determination of the question of undue influence we are first to look to the printed leaflet Ex. 28 issued in connection with the meeting with the heading "Ganjam Bauri Jatiya Mahasabha" meaning general meeting of the bauris of the District of Ganjam. It reads that the invitation is extended to the entire bauri community of Mohuri Taluq. The contents of the notice are clear that a general meeting was proposed to be held at Sukunda and certain important caste matters were to be discussed in the meeting. Respondent-1 in his written statement paragraph-8 has also said that his father was the hereditary head of the bauri caste, that the headship falling vacant after his father's death was not assumed by him as he held service and that some respectable persons of the bauri caste since had decided to convene the meeting of the caste people for bettering the condition and interest of the bauri community and to confer upon him the insignia of casteheadship. Against the above pleading in the written statement and the wording of the notice Ex. 28 extending the invitation to all the bauris of Mohuri Taluq, it is sought to be urged by respondent-1's lawyer that respondent-1's headship cannot in any event extend to the entire Mohuri Taluq and the purpose of the Sukunda meeting was necessarily to confer the headship of the Mutha. The intention is the material factor and here the intention as can be gathered from the notice Ex. 28 was to hold a meeting of the bauris of the entire Taluq. The notice not only says that the bauris of the entire Taluq should attend and discuss certain important matters affecting the community, the signatories to the notice included heads of other Muthas and religious heads and the matters proposed for discussion at the meeting are matters of importance which concern the bauri community in general. If the object of the meeting was to confer the headship of the Mutha on respondent-1, discussion of matters of general importance was outside the scope of the meeting. What is further to be noticed in connection with the leaflet Ex. 28 is that coercive and threatening words were used demanding the attendance of the bauris and the absentee bauris being called upon to explain their conduct. Never for a meeting the purpose of which is to confer the headship upon one person such a notice is necessary far less when respondent-1 was to assume the headship in the vacancy caused by the death of his father, late Benu Das. The place of meeting viz. Sukunda is outside the Mutha of which late Benu Das was the head and respondent-1 was next going to be appointed headman. It is said that late Benu Das was invested with sarees there at Sukunda and so the investiture ceremony of respondent-1 was also held there at Sukunda. No corroborative evidence on the point has been led and the holding of the meeting at Sukunda to invest respondent-1 with the headship is somewhat unusual. Except Sanya Bhalabhai, signatory No. 3 who is R. 1 W. 33 and signatory No. 2 Agadhu Maha Naiko who is resident of Golanjar, the other three are outsiders. The three outsiders are Guruswamy Ananda Chandra Das of Baudh, Balisima member of Sukunda and Chendru Das of Nimmakhandi. The convener of the meeting R.1 W.33 says that he sent for other people except Guruswamy Ananda Chandra Das who came to his place casually. He also has said that to give publicity to respondent-1's appointment as Behera, Chendru Das one of the signatories and another Dharmu Behera, two outsiders, were invited. Prior to issue of the leaflet Ex. 28, he admits, that there was deliberation at his house where the five signatories had met and discussed. This witness is highly interested in respondent-1, he having contributed Rs 200 to him for the election expenses. He also knew about respondent-1's candidature before he convened the meeting at Sukunda. Taking the interestedness of

the witness along with the fact that there was preliminary arrangement for the meeting and outsiders were called to join, it is difficult for us to believe that the object of the meeting was simply to choose respondent-1 as castehead. R.1 W. 33 wants to get over the objectionable portion in the notice Ex. 28 by evading to admit paragraphs 4 and 6. Paragraphs-4 speaks of submission of satisfactory explanation by the absentee members and paragraph-6 speaks of treating the absentee members as enemies of the caste and persons in whose veins the bauri blood did not flow. The publication of the notice Ex. 28 being done by R. 1 W 33 and it being further admitted that prior to the issue of notice there was deliberation at his house and that the signatories to the notice were sent for and their signatures obtained, there is hardly any point in evading to admit paragraphs 4 and 6 of the notice. Here again we are to pause as to why the holding of ordinary meeting for the appointment of the head of the Mutha would necessitate the issue of a leaflet in such strong terms. Respondent-1 admits that the notice Ex. 28 has not been happily worded and his evidence on the point is as follows:--

"I was struck by the wording of the hand-bill. The wordings are very uncivil. Still I did not raise any question over that aspect".

Again reverting to the signatories, R.1 W.33 Sanya Bhalabhai might have signed as convenor of the meeting and Agadhu Maha Nalko as a man of one of the 16 villages comprised under the Mutha, the affixing of the signature of Guruswamy Ananda Chandra Das who according to R.1 W.33 came to the village casually only speaks of the meeting at Sukunda being a general meeting of the bauri community. Chendru Behera of Nimmakhandi apart from being an outsider to the Mutha was another bauri candidate fighting the election of the constituency. Why should Chendru Behera *alias* Chendru Das who is respondent 9 in this case would lend his signature to the notice unless the meeting was intended to be the caste meeting of all the Bauris of the constituency? Coming last to Baisima member of Sukunda his village is outside the Mutha of which Dandapani Das respondent—1 was made the headman and his signing the notice is similarly suggestive of the meeting being a general meeting of the bauris. Thus even if R.1 Ws. 1 to 11 state that the meeting at Sukunda did not concern their Muthas and even if R.1 Ws. 12 to 19 say that the meeting was confined to their Mutha namely Mohuri Gadakeswar Mutha and not to the entire Mohuri Taluq, on the construction of the notice or the leaflet Ex. 28 we hold that the meeting at Sukunda was a general meeting of the bauris of the Berhampur constituency corresponding to Mohuri Taluq and not of the bauris of Mohuri Gadakeswar Mutha only.

24. It is next to be seen if the meeting had the far reaching effect of inducing the Bauri electors of the constituency to vote for respondent—1, their caste man and for respondent—2 who according to the petitioner had set up respondent—1. To appreciate the evidence, certain important facts which are not disputed are to be borne in mind. To refer to such facts the first of them is that one month and ten days after the resignation of respondent—1 from service the question of his appointment as caste head or the Behera of his Mutha was taken up for consideration though his father who was the Behera of the Mutha had died 5 years before the meeting and the Beheraship for the first two years was with Agadhu Maha Nayak of Kolantar and for the next three years with R.1 W.33 Sanya Bhalabhai. R.1 W.33 had advanced Rs. 200/- 10 or 11 days before the polling to respondent—1 and knew all about respondent—1's candidature and it is this gentleman who convened the meeting and gave up the Beheraship in favour of respondent—1. The unnecessary haste with which the meeting for the alleged leadership was convened and the unusual interest evinced by R.1 W.33 in convening the meeting are circumstances only incompatible with the meeting being an ordinary meeting called for selection of headman or Behera and are quite compatible with the meeting being a caste meeting of the bauris convened for election purposes. As already said signatories to the notice included three outsiders including respondent—9 Chendru Das, the Behera of Nimmakhandi and prior to the meeting on 20th December, 1951 there was a preliminary discussion and meeting at the house of R.1 W.33 as admitted by the witness himself. There is disagreement as to the date of meeting—the petitioner's version regarding the date being both 20th and 21st December 1951 and respondent—1 confining the date to 20th December alone. In the written statement the continuance of the meeting of the 20th to 21st morning is not traversed (as admitted by respondent No. 1) and the meeting which commenced on 20th December, 1951 and went on till late in the night shall necessarily be held to have continued till the morning of 21st December, 1951. Never an ordinary meeting organised for conferring hereditary headship needs previous deliberations nor such a meeting would last for two days. To understand the further significance of the meeting it is to be seen if oath was taken on the second day of the meeting before the deity Narasimha Mahaprabhu and the bauris present at the meeting promised on oath to give one vote to respondent—1 and the other

to respondent No. 2, the supporter of respondent—1. It is also to be seen if there was feeding at the place of the meeting and the expenses and the charges of the meeting and feeding were met by respondent—2. Respondent—1 denies taking of oath and feeding and confines the meeting to a few hours in the afternoon of 20th December, 1951. The petitioner has no tangible evidence on the question of oath taking and the evidence to the effect that all the bauris about 500 in number took their bath the next morning, entered the temple compound, stood before the deity with folded hands and took the oath is too artificial to be believed. But we get it that near the place of the meeting at Sukunda there is the temple of the deity Narasingh Mahaprabhu. The reason for choosing Sukunda as the place of the meeting as assigned by the respondent viz. that respondent—1's father late Benu Das was given the Behra saree there, lacks corroboration and such a reason can hardly hold good. Sukunda being a place outside the Mutha of respondent—1 and the reason assigned on respondent—1's side for holding the meeting there being not acceptable, the only inference that we are to draw is that the bauris selected Sukunda because of the shrine of the deity of Narasingh Mahaprabhu being there and because on the caste people a solemn decision taken at a sacred place to vote for respondents 1 and 2 would have binding effect. We feel no doubt that oath or no oath the leading men of the bauri caste met there and made a solemn decision and declaration to vote for respondents 1 and 2 on pain of ex-communication and fine to those who violated the same and they decided to propagate the said mandate to all the bauri electors through their respective Mutha heads and Bhalabhais. On the point of actual feeding the petitioner has not made any specific averment except referring to the fact of feeding as written in the notice Ex. 28. The notice Ex. 28 clearly states that arrangement for food and drink had been made. R.1 W.33 the convenor of the meeting admits that such a fact as feeding was written in the notice, though he adds that he could not make provision for the feast. The admitted notice being to the effect that food and drink will be supplied to the invitees and the feeding even though faintly alleged in the petition not being traversed in the written statement (as admitted by respondent—1) the petitioner's version of feeding cannot be ruled out as altogether false taking into account the fact that several people had come from distant places, and the meeting was held till late in the night and the people are of a low class of society.

25. Having outlined the circumstantial features viz. that the meeting was a caste meeting of the bauris, that there was a solemn decision arrived at the meeting and that the meeting was accompanied by feeding, now we come to consider the oral evidence led by the petitioner on these points. P.Ws. 7, 8 and 9, 12, 14, 24, 25, 34 are the witnesses who directly or indirectly depose about the Sukunda meeting, the taking of oath and the feast. P.Ws. 7, 8 and 9 are bauris of Bavanipur and they state that they were deputed by Budhia Das P.W. 10 the old man of their community to attend the meeting. They also say that 2 or 3 days before the meeting the notice Ex. 28 had reached their village and before the meeting respondent 1 had come to their village taking with him 4 or 5 people. Regarding the meeting itself, their evidence is that they reached Sukunda in the afternoon while the meeting was in progress, heard the lecture given by an outsider one Mohammadan gentleman, stopped there for the night when the feast was going on and next morning saw all the bauris who had attended the meeting proceeding near the temple and there in front of the deity taking oath promising to give one vote to respondent 1 and the other to respondent 2. They also say that in the night there was Sadi Bandha ceremony of respondent 1 and the said respondent after the function declared that he would do good to the country if he is elected. Last of all they say that they took their food there at Sukunda in the night and did not take the oath the next morning. Exception is taken to the evidence of P.Ws. 7 to 9, they being all co-villagers, but Budhia Das P.W. 10 comes and corroborates the fact that the above three attended the Sukunda meeting being deputed by him. It is true that P.W. 10 is also a co-villager of P.Ws. 7 to 9; but the material fact deposed to by the latter is an admitted feature of this case. That is, the meeting at Sukunda on 20th being admitted, there is very little to doubt the evidence of P.Ws. 7 to 9 when they say that they went in the afternoon of 20th, joined the meeting at Sukunda, stopped that night there to see the Saribandha ceremony and witnessed the taking of a solemn decision and declaration. The intrinsic value of the evidence of P.Ws. 7 to 9 lies in the fact that the ex-communication of the bauris of their village as deposed to by them is admitted on respondent's side as per the proceedings of the Tarini hill meeting Ex. 27. It might be said that P.Ws. 7 to 9 as aggrieved villagers of Bhavanipur are coming to depose against the respondent and in this context it becomes material to see if the cause for the ex-communication as said on respondent's side is true. The cause for the ex-communication according to the petitioner, is the fact that the bauris of Bhavanipur did not fall in with the views of the other bauris of the taluq in the matter of voting for respondents 1 and 2 while on the side of the

respondent No. 1, it is said that Modan Das, a man of Bhavanipur gave his daughter in marriage to one of the sons of Jema Dasiani, a fallen woman and hence the whole village of Bhavanipur was ex-communicated in the meeting held at Tarini hill. R. 1. W. 20 Sombaria Behera is the Behera of Palligumuda mutha under which Bhavanipur village comes. He has deposed in very clear terms that Madan Das alone was ex-communicated and the bauris of Bhavanipur were not ex-communicated and that they still have social intercourse with the other bauris. The ex-communication of the bauris of Bhavanipur village at Tarini hill, as already said is an admitted feature. It being so and the cause for ex-communication advanced on respondent's side being disproved by their own witness R.1. W.20, the petitioner's version regarding the ex-communication of bauris of Bhavanipur appears to be a true one and as such the evidence of P.Ws. 7 to 9 is not tainted with the mean motive arising out of ex-communication. Here it is also to be noted that the printed rule Ex. 27 passed in the meeting at Tarini hill is without any reason and still the bauris of Bhavanipur have been debarred from social intercourse with other bauris. Even believing the respondent's version that the ban imposed at the meeting had its origin from Madan Das giving his daughter in marriage to the son of the fallen woman Jema Dasiani, the said woman on the same day had given another son of her in marriage at Jagannathpur and Jagannathpur bauris have admittedly not been outcasted. Thus it is no good saying that Bhavanipur bauris were ex-communicated at the meeting at Tarini hill because of the fact that their villager Madan Das gave his daughter in marriage to the son of Jema Dasiani when according to the evidence of R. 1. W. 20, himself Jagannathpur bauris because of their connection with Jema Dasiani were not ex-communicated and still are carrying on social intercourse with the other bauris. P.Ws. 7 to 9 have made statements about the after effects of their not giving vote in pursuance of the caste mandate and in their narration of the incidents resulting from the after effect some amount of discrepancy has been pointed out. The evidence of P.Ws. 7 to 9 on the point of ex-communication being worth believing it is not of material consequence if the bauris of Bhavanipur were given no work at the railway station, if the Samandiani of Sukria Das (a man of Bhavanipur) had been fined Rs. 5 for her interdining with Sukria Das and if the light-owner of Berhampur did not supply lights to the village on the occasion of Bhajagobinda as deposed to by the above witnesses. Even if stress is laid on the statements made about the after effects, Sukria Das P.W. 11 has been examined to say that his Samandiani was penalised for interdining with him. To sum up, the evidence of P.Ws. 7 to 9 about the Sukunda meeting both in the afternoon of 20th the taking of a decision to vote for respondents 1 and 2 and in the morning of 21st December 1951, the making of a solemn declaration in the morning of 21st and the feeding of the bauris in the night of the 20th, is worth believing. Here it may be noted that Bhavanipur bauris are branded as supporters of the petitioner and respondent 3 (*Vide* para 8 of the respondent 1's written statement). This further leads to the conclusion that P.W. 7, 8 and 9 are not black sheep of the bauri community to come and depose against respondent 1, but pledge their oath about the actual facts witnessed by them. P.W. 12 is the next witness who has deposed that he saw the meeting at Sukunda at 4-30 or 5 a.m. and next morning heard about the oath-taking from the bauri workers. The meeting at Sukunda in the afternoon of 20th being admitted, there is not much to comment his evidence about the meeting. The oath-taking, which he says, he heard the next morning, might not fit in with the petitioner's case inasmuch as the oath-taking itself was in the morning of the next day. Referring to P.W. 12's evidence it is sufficient to say that he supports the fact of the meeting at Sukunda. P.W. 14 Gopalakrishna is the next witness on the point. He says that he attended the meeting at Sukunda on the first day and also went the next morning to see the taking of oath. This witness was a worker for respondent 3 and naturally one would expect that he would keep information about the meeting of the anti-party and action, if any, taken there. This witness has clearly told us that seeing the hand-bill he went and attended the meeting at Sukunda and that only probablis the fact that he saw the meeting of 400 or 500 people on 20th, the solemn declaration of the bauris on 21st morning and feeding of the bauris batch after batch in the night of 20th. Attempt has been made in cross-examination to shake his evidence, but nothing tangible has been brought out to discredit his evidence. The other material witness who speaks about the meeting, the decision, declaration and the feast is P.W. 34, Ramachandra Naiko of Sapuapalli. He says hearing that the bauris of Mohuri Taluq had assembled at Sukunda, he went there on 20th, stayed there for the night and next morning saw the oath taking. He has deposed that he heard lectures being given in the meeting exhorting the bauris to vote for respondent 1 and respondent 2, that in the night Silk Sari was tied on the head of respondent 1 as the *Mohadamani* of the caste, that respondent 1 addressed the meeting stressing to give one vote to respondent 1 and another to respondent 2 who had spent money.

He had also said that the bauris stayed there at night being forced to stay on and in the next morning the bauris after their bath came before the deity Narasingh Mahaprabhu and promised to give their vote—one to respondent 1 and another to respondent 2. He has further gone on to say that after the oath was taken respondent 1 asked the caste-heads of different villages to come on the polling day, taking with them all the bauris and record votes one for him and another for respondent 2. It is suggested that this witness is a creature of Sri Brundaban Naik, a candidate fighting the election at Himjili on Congress ticket and at his instance is deposing falsehood. Neither the connection of Sri Brundaban Naik with petitioner and respondent No. 3 is established nor is it shown that difference exists between Brundaban Babu on the one hand and respondent 1 and respondent 2 on the other. It being so, and the witness being a bauri of another village named Sapuapalli there is much force in his evidence that he saw the meeting at Sukunda on 20th and the pledge in the morning of the next day. The other witnesses who have referred to the fact of the meeting, the oath and the feast are P.Ws. 24 and 25. P.W. 24 has said that on the night of the 20th he was informed by his Taliari about the Sukunda meeting and next day at 9 A.M. he visited Sukunda and saw that the bauris numbering 150 were taking oath before the deity. He also has said that respondent 1 was present there and asked the bauris to give one vote to him and another to respondent 2. P.W. 24 being the karji and Abhimanya Naiko his taliari having attended the meeting with his permission, there is nothing to disbelieve his evidence that he got the information about the meeting that very night and witnessed the proceeding the next morning. Abhimanya, the taliari, is not examined but Abhimanya's presence at the meeting is deposed to by P.W. 25 who witnessed the meeting at Sukunda on the night of 20th. Thus P.W. 24's evidence on the point of the meeting and the solemn declaration to vote for respondents 1 and 2 need not be disbelieved. Last coming to P.W. 25, he worked for respondent 6 Basu Patra. He says that on his way to Berhampur in the morning he saw preparation for the feast at Sukunda and while returning home that day between 3 and 4 P.M. he saw the meeting of the bauris going on, lectures being given stressing that out of the two votes one should be given to respondent 1 and another to respondent 2 and that the bauris were being treated with food in batches. Respondent 6 has not supported the petitioner or respondent 3. Why P.W. 25 a worker of respondent 6 would speak of the preparation for the feast in the morning and the holding of the meeting in the afternoon, feast at night unless the holding of the meeting and the feast as deposed to by him are true? To deny that the meeting at Sukunda was a general caste meeting, that there was a solemn pledge taken at Sukunda and that there was also the feast on 20th December 1951 R.Ws. 12 to 19, 33 and 34 have been examined. According to these R.Ws. the meeting was only for two hours i.e., 3 to 5 P.M. on 20th December and the number of persons attending the meeting was 80 or 90 and that the persons who attended the meeting belonged to 16 villages of the Ghadakeswar Mutha. As already seen, three out of the five signatories to the notice Ex. 28, are outsiders, there is the mention of an arrangement for food and drink for the persons attending the meeting in the notice Ex. 28, that the terms of the notice are so very stringent that any bauri who would fail to attend the meeting would have to offer satisfactory explanation for his absence. That apart, distribution of notice one for each house has been admitted by the above R.Ws. Though no food was supplied, it is admitted, that it was notified that there would be arrangement for supply of food and drink. R. 1. W. 12 is the brother-in-law of respondent 1, though he denies that fact. He avoids to admit that he was working for respondent 1 though the receipt passed for the remuneration received from respondent 1 is admitted and marked Ex. 24 (a). Curiously he does not refer to the presence of other R. 1. Ws., even of his co-villager R. 1. W. 13 who come to deny the petitioner's versions of the meeting. Though R. 1. W. 12 says that Sania Bhalabhai (R. 1. W. 33) alone spoke at the meeting, R. 1. W. 13 says that the Guru Ananda Chandra Das exhorted the men of 16 villages included under the Mutha to appoint respondent 1 as the Behera. Though R. 1. W. 12 denies the marriage relationship with respondent 1, R. 1. W. 13 affirms that R. 1. W. 12 has married the sister of respondent 1. R. 1. W. 14 unlike R. 1. Ws. 12 and 13 admits that he had known respondent 1's candidature nearly one month before the meeting and that respondent 1 asked for one vote for himself at the meeting. It is this witness who introduces one Sadanand Das as the 2nd Guru besides Guruswamy Anand Chandra Das. Further he admits that contrary to the usual practice two Beheras of outside Muthas were invited on the occasion. R. 1. W. 15 unlike R. 1. W. 12 says that respondent 1 himself addressed the gathering for keeping good conduct. This witness different from R. 1. Ws. 12 and 13 and in the same vein as R. 1. W. 14 states that respondent 1's candidature was known by the time of the meeting. Then we come to R. 1. W. 16. The cat is out of the bag when he says that respondent 1 came 8 or 10 days before the meeting to seek for votes and then he was not assured any

vote but later decision was made at the house of the karji that one of the two votes would go to respondent 1 and the other to respondent 2. R. 1. W. 17 like R. 1. W. 16 speaks of respondent 1's approaching them for votes before the meeting and their assuring respondent 1 of all possible help. R. 1. W. 18 says that at the meeting his views in the matter of Sareebandha ceremony were ascertained by Sania Behera and later the Bhalabhai Charan Das appealed to them to consider the claim of respondent 1 who in the opinion of the Bhalabhai was made the Raja. R. 1. W. 19 says that at the time of the meeting respondent 1's candidature for the election was being discussed in the village though it is said that nothing was mooted at the meeting about respondent 1's success. R.1. Ws. 14, 14, 16, 17 18, 19 having clearly said that they went to the meeting knowing all about respondent 1's candidature and some of them having said that respondent 1's candidature and some of them having said that respondent 1 had approached them for vote previously, the object of the meeting at Sukunda was evidently to influence the bauri electors in general and the above R.1.Ws. in particular and the Sareebandha function was simply a cat's paw. There remains R. 1. W. 33 and respondent 1 who is R. 1. W. 34. Regarding R. 1. W. 33's interestness enough has been said. R. 1. W. 33 being previously aware of respondent 1's candidature and he having advanced Rs. 200 to respondent 1 for election, undoubtedly it can be said that the meeting convened by this witness at Sukunda had the main object of winning the bauri voters to respondent 1's side. Last we come to respondent 1 who is R. 1. W. 34. Apart from the question if respondent 1's Beheraship was confined to Ghadakeswar Mutha or respondent 1's appointment meant headship of the entire bauri community, respondent 1 has told us that he knew nothing about the meeting till 2 or 3 days before the actual meeting, that he was struck by the wording of the notice which was very uncivil, and that he unwillingly agreed to the holding of the Sareebandha ceremony at Sukunda, he being then busy with election work. It is to be seen if respondent 1 was really unconcerned about the meeting and the hand-bill Ex. 28 issued for the meeting as said by him or at his instance and at the instance of respondent 2 everything was done to secure the bauri electors on their side. It is necessary first to see here what position respondent 1 had in the bauri community before the meeting at Sukunda. It is also necessary to see here under what circumstances respondent 2 took respondent 1 into his party. So far as respondent 1's position is concerned, he was first a student in the school and in 1948 he joined the police department. On the 10th of November 1951 i.e., one month ten days before the meeting he gave up service and came to seek election for the plural constituency of Berhampur where there is a large number of bauri electors. It is true that respondent—1's father Benu Das was the headman or Behera of one of the Muthas or groups of bauri villages, but respondent—1, as said above, had no occasion to come in contact with the bauris even of his only Mutha.

26. We come next to respondent—2's position. He is no doubt a local advocate who, it is supposed, wielded sufficient influence over the non-harijan section of the electors of the constituency. The point is what influence he had on the bauri voters. To get an idea about respondent—2's position in regard to bauri electors we may first go through respondent—2's evidence so far as it relates to his acquaintance with respondent—1. In the cross-examination respondent—2 has said that his party namely the Independent Peoples Party or Swadinajana Sangh had not selected any candidate for the scheduled caste seat. There was no programme or manifesto of his party. Sri Dibakar Patnaik R. 2, W. 41 though not a member of his party was interesting himself in the affairs of his party as his party (R. 2 W. 41) was working hand in hand with Swadinajana Sangh party. He has further said that it was Dibakar Babu who was in charge of arranging a second man for the reserved seat, that he fixed up respondent—1 as the candidate, brought him (respondent—1) to him and asked him to accept him in his party. Respondent—2 has admitted that before 10th November he had no information about the two bauri candidates meaning respondent—1 and respondent—9, but after respondent—1 joined his party there was mutual exchange of promise between him and respondent—1 to help each other in the election canvassing. The above state of things can only mean that respondent—2 was completely in the dark as to who was going to be the second man of his party and what influence he would have in the community to which he would belong. Respondent—2 wants us to believe that he did not ascertain the financial position of respondent—1 when he came and joined the party. He further wants us to believe that he was sure of his success and did not care to know his position in the constituency. Still, we get it from respondent—2's evidence that on 15th December he purchased the loud speaker for a heavy sum of Rs. 750 and that he used the loud speaker, car, van and workers in furtherance of the cause of respondent—1. Be it for respondent—1 or for himself, respondent—2 started vigorous election campaign after 15th December. Only one month and five days before 15th December respondent—2 had come to know respondent—1. R.2. W.41, Dibakar

Babu who introduced respondent—1 to respondent—2 was not a previous acquaintance of respondent—1 but the two came to know each other on the day respondent—1 filed his nomination paper i.e., on 10th November. R.2.W.41's acquaintance again was not direct but was through R.2.W.44 Abdul Rauf who had signed respondent—2's nomination paper on 8th November 1951 and respondent—1's nomination paper on 10th November 1951. Against Abdul Rauf the suggestion is that he made respondent—1 to resign from service and join respondent—2's party and that he also caused the combination of the bauri voters to help respondent—1 and respondent—2. Respondent No. 2 in the above circumstances could possibly have no access to the Bauri voters and it was only by the meeting of the bauris at Sukunda he could hope to approach them. In other words, respondent—2 could not have won the bauri voters to his side except through the meeting at Sukunda. In regard to the presence of respondent—2 at the meeting at Sukunda the petitioner's case in the petition is that respondent—2's agents had attended the meeting while the evidence is that respondent—2 Sri R. C. Misra himself had attended the meeting. Both respondent—1 and respondent—2 deny that either respondent—2 or his agent had attended the meeting. The agent of respondent—2 Abdul Rauf R.2.W.44 whose presence at the meeting is spoken to by some of the petitioner's witnesses also comes and denies that he (respondent—2) had attended the meeting of bauris at Sukunda. Ex. 31 "Nibedan" was printed and distributed in the middle of December as admitted by respondent—2. The author of the Nibedan is Dibakar Babu R.2.W.41. He has told us that Ex. 31 was issued to the voters in support of the candidature of respondents 1 and 2 and on the 7th or 8th December the draft was prepared at his house and he and two others signed the draft that day. He also had said that Benudar Panda signatory No. 2 was asked to circulate the Nibedan for signature and distribute them after print. The drafting of Nibedan in the first week of December and distribution of the same by the middle of December after print is only consistent with the view that till the meeting at Sukunda on 20th and 21st December, the party of respondent—2 was doubtful about success. Respondent—2 in the first part of his cross-examination has said that he did not care to know his position in the constituency being sure about the success and that he remained indifferent when he heard the news of respondent—9 another bauri candidate withdrawing from contest. He has also said there that he did not give any thought to the question of division of bauri votes because two bauri candidates were standing from the same constituency. But all these statements appear somewhat unnatural when we take into account the admitted fact that there was mutual exchange of promise between respondent—2 and respondent—1 to help each other in the election canvassing and the further fact that respondent—2 used his loud speaker, car, van and the workers for the furtherance of the cause of respondent—1. Respondent—2's direct connection with the Sukunda meeting is deposed to by Gopalakrishna Das P.W. 14. P.W. 14 is the worker of respondent—3 and he visited Sukunda on getting the information about the meeting. He also has said that he got the hand bill Ex. 28 before he attended the meeting. This being the circumstance and respondent—2 being identified in Court there is little to doubt P.W. 14's evidence that he saw respondent—2 at the meeting. It is said that respondent—2's presence at the meeting was not reported to respondent—3 or the petitioner and that the petition is silent about it. When the witness did not report respondent—2's presence to the petitioner or to respondent—3 the petition necessarily would be silent about the fact. P.W. 14's evidence being not shown to be unreliable, on that evidence we hold that respondent—2 also attended the meeting even though for a short time. The next witness who speaks about respondent—2's visiting Sukunda on the day of the meeting is P.W. 25, Khaili Patra. According to him in the morning while he was coming viz. Sukunda to Berhampur he saw respondent—1, respondent—2 and their worker Narayana Behera R.2.W.53 near the muth at Sukunda and respondent—2 was heard saying to Narayana Behera to get all things from Berhampur to arrange the feast and not to be miserly in securing things for cooking. This witness has further told us that he heard respondent—2 talking to the gumasta of the muth to supply the cooking utensils etc. P.W. 25 is the supporter of respondent—6 Basu Patra and the said Basu Patra does not support the petitioner. In the circumstances, the witness cannot be said to be a partisan witness and deposes about respondent—2's presence falsely. P.W. 34 is a bauri of Sapuapalli and he has also said that he saw respondent—2 at the meeting for about five minutes. No reason is assigned as to why this witness would turn hostile to his caste man respondent—1 and depose in favour of the petitioner. Besides the evidence of the above P.Ws., the police report Ex. 33 is to the effect that a meeting of bauris was held at Sukunda and Sri R. C. Misra respondent—2 arranged to feed the people who attended the meeting at Sukunda. Sri P. R. Misra, S. I. of Police, P.W. 44 has proved the police report and has stated that on the basis of secret information he sent the report. This evidence is to be taken for whatever it is worth and serves as a corroboration of the oral evidence, Respondent—2 got

respondent—1 to his party and it was to respondent—2's interest to have everything done in connection with the election from behind the screen. In that state of things the little evidence that the petitioner has been able to offer about respondent—2's presence at the meeting coupled with the circumstances would appear sufficient particularly when respondent—2 has tried his utmost to suppress his complicity in the matter of meeting at Sukunda. A word need be said regarding the denial of Abdul Rauf R.2.W.44 in the matter of Sukunda meeting. It might not be possible for the persons who witnessed the Sukunda meeting on petitioner's side to identify Abdul Rauf, but mention has been made of one Mahammadan gentleman addressing the meeting at Sukunda on behalf of respondents 1 and 2. That apart, admittedly Abdul Rauf was worker of respondent—2 and secured respondent—1 for respondent—2 by first being his seconder in the nomination and secondly having advanced him cash of Rs. 50 on the day of nomination. Coming last to respondent—1's denial, it is easy for him to deny that respondent—2 attended the meeting at Sukunda but we must remember that respondent—1 had no identity whatsoever in the party of respondent—2 and he was a puppet in the hands of respondent—2's workers Dibakar Babu and Rauf. Respondent—2 had also told us that he abruptly picked up acquaintance and friendship with respondent—1 and still he did all that was necessary for respondent—1's success. Lastly, according to respondent—1's own showing he has adopted the written statement of respondent—2 *mutatis mutandis* though respondent—2 has avoided to admit that fact by saying that he does not know if respondent—1's lawyer has taken note of his written statement. Taking the attitude of respondents 1 and 2 into consideration, no importance need be attached to respondent—1's statement that respondent—2 did not attend the meeting at Sukunda.

27. Though we find it established on the evidence that there was a caste-meeting of bauris at Sukunda on 20th and 21st December 1951, still it is to be considered if undue influence, coercion and intimidation were thus committed by both the respondents or any one of them and thus are or is liable for any punishment under the election law. Before examining the matter from the legal stand point, we are to consider the situation in the constituency so far as bauri voters are concerned before and after the meeting at Sukunda. P.W. 13 and P.W. 27 held joint election tour on behalf of the petitioner and respondent—3 together. P.W. 22, worked both for the petitioner and respondent—3 and P.W. 23 did canvassing on behalf of respondent—3. All these P.Ws. have stated that on their previous visits to the villages inhabited by bauri voters, they were first told by the bauris that the matter was receiving their consideration and secondly they assured votes for the congress. But in the last visit just before the voting they were disappointed and said that the bauri voters had been bound by their caste decision to vote for respondent—1 and any violation would entail ex-communication. Comment is made on the above evidence saying that these P.Ws. do not mention the names of the persons who gave the disappointing reply or those of the informants. It is unusual to expect that the witnesses would be able to name their informants as the information obtained was of a purely general character. Respondent—2's lawyer here cites A.I.R. 1941 P.C. page 16 and A.I.R. 1943 Calcutta page 76 to urge that the statements made by the above P.Ws. is hearsay evidence and as such inadmissible. Referring to the Privy Council decision he also submits that it is not open to any Judge to exercise dispensing power and admit evidence not admissible by the statute because it appears to him that the irregular evidence would throw light upon the issue. As against this it is submitted on the petitioner's side that in the case of *Srimati Bibhati Devi Vs. Ramendra Narayana Ray* and others reported in A.I.R. 1947 P.C. page 19, it has been held that a statement and request when they are held to be facts and are proved, the Court can presume existence of authority for request under Sec. 114 of the Evidence Act. Paragraph—17 of the judgment of the above case at page—27 deals with the conclusive evidence of the four witnesses who deposed about the time of death of a particular person. The evidence as to time of death was based on the statement of a man who came with the news that the 'Kumar' was just dead and he made a request to the man for help to carry the dead body for cremation. The man who gave the information was not identified and was not a witness. In paragraph—18 their Lordship's observations are as follows:—

"That the statement and request made by this man was a fact within the meaning of Secs. 3 and 59 of the Evidence Act and that it is proved by the direct evidence of witnesses who heard, within the meaning of Sec. 60; but it was not a relevant fact unless the learned judge was entitled to make it a relevant fact by a presumption under the terms of Sec. 114. As regards the statement that the 'Kumar' had just died, such a statement by itself would not justify any such presumption, as it might rest on mere rumour, but in the opinion of the Lordships the

learned Judge was entitled to hold in relation to the fact of the request for help to carry the body for cremation, that it was likely that the request was authorised by those in charge at *Step Aside*, having regard to "the common course of natural events, human conduct, and public and private business" and therefore to presume the existence of such authority. Having made such presumption, the fact of such an authorised request thereby became a relevant fact and the evidence of the 'Maitra group (i.e., 4 witnesses)' became admissible."

Here the persons who informed the above P.Ws. are not witnesses to the mandate given at the meeting, but the caste mandate that the bauri voters would vote for respondents 1 and 2 on pain of ex-communication as reported by the bauris have been reproduced. Thus there is the direct evidence of the persons who heard the mandate and in relation to the fact of the mandate it is likely that the same was issued at the instance of the persons in authority. The evidence that a mandate was issued and as per the mandate the voters had changed their mind and were inclined to vote for respondents 1 and 2 is, therefore, admissible even without the evidence of the informants. Further P.W. 21 besides stating that the bauri voters had changed their view after the Sukunda meeting has stated that in the meeting of the bauris held in his village he heard Bauri Das and Girdhari Das, two bauris, giving lectures to the other bauris that at the Sukunda meeting the bauris had taken a vow to vote for respondents 1 and 2 and in conformity with the vow all bauris would vote for respondents 1 and 2 and any violation would meet with social boycott. P.W. 24 who is the karji went and saw the oath-taking at Sukunda on the morning of 21st. He has said that he heard respondent—1 threatening the bauris at the place of oath-taking saying that non-observance of the condition that one vote should be given to him and another to respondent—2 would entail penalty of fine, and ex-communication. He also says that he heard respondent—1 asking the bauris present to convey the resolution to the absentee bauris. P.W. 32 has similarly said that Dharma Das and Kalia Das, the Behera and Dandia respectively of his village Majigam were explaining to Bauris that there was the decision at Sukunda meeting to vote for respondents 1 and 2, that respondent—2 should be given one vote as he had set up respondent—1 and failure to vote as above would result in social boycott. He also heard the above persons asking the other bauris to abide by the oath taken at the meeting. P.Ws. 19 and 20, workers of respondent—3 also have deposed that in their election tour they came to know about the oath-taking and as a result of it the bauri electors changing their inclination to vote for the congress. Such is the statement of P.W. 28 Jagannath Panda and P.W. 42 Trilochan Patra two respectable persons and workers of respondent No. 3. Add to the above evidence of the P.Ws. there is the clear admission of R.2.W.39 Arjun Patnaik that the bauri voters assured their votes till the end for the congress and after 21st December the bauris stated that their man was fighting the election (meaning respondent No. 1) and they cannot vote for the congress. Similar is the admission of R. 1. Ws. 13, 16, 17 and 18. R. 1, W. 13 says that at the Sukunda meeting Ananda Chandra Das the Guru gave lectures exhorting the bauri villagers included in Mohuri Mutha to appoint respondent—1 as the Behera and that the congress people were not assured anything at first, but later they were definitely told that no vote would be given to them. R. 1, W. 16's evidence is that respondent—1 was not assured of the votes when he came to beg for the votes before the meeting, but later at the house of the Karji in the presence of the Adhikari and Bhalabhai there was the decision among the bauris that respondent—1 should be given one vote and the other vote should go to respondent—2. R. 1, W. 17 has stated that after the meeting respondent—1's men saw him and he disposed them off saying that he had already given his word for respondent—1. R. 1, W. 18 has deposed in the same vein when he says that after the meeting at Sukunda the Bhalabhai Charan Das, explained to the villagers that respondent—1 was made the raja of the caste and that his candidature was left to be considered by the bauri villagers finally. In the above state of evidence on record there is little hesitation to say that the bauri electors had originally their sympathies for congress candidates, but as a result of the Sukunda meeting, the caste mandate given and propagated through the headmen of the caste, and the threat of ex-communication and fine in case the mandate was not respected, they changed their mind and decided to vote for respondents 1 and 2.

28. Now we come to the legal aspect of the matter. Undue influence as defined in Sec. 123 Cl. 2 is any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of a candidate or his agent with the free exercise of any electoral right. Sub Clause a(i) of Cl. 2 is that who threatens any candidate or any elector or any person in whom a candidate or an elector is interested with injury of any kind including

social ostracism and ex-communication or expulsion of any caste or community shall be deemed to interfere with the free exercise of electoral right of such candidate or elector within the meaning of Cl. 2. Reading the above definition side by side with the facts established on evidence we have no hesitation in finding that the corrupt practice of undue influence has been widely exercised amongst the bauri electors of the constituency who form a large section of them ranging between 7 to 10 thousands and that the election has for that reason not been a free election as contemplated by Sec. 100(1)(a) of the Representation of the People Act. The point is that respondents 1 and 2 are guilty of that offence of respondent—1 alone he being a bauri and being at the bottom of the meeting at Sukunda. Respondent—1 attended the meeting of the caste people held at Sukunda, got the Sareebandha function performed in his favour in connection with his appointment as Behera of his Mutha and on the eve of the voting got contribution from at least two of the signatories to the notice which was issued for the meeting i.e., Rs. 300 from Baisima member of Sukunda and Rs. 200 from Sanya Behera, ex-Behera of his mutha. Further it has been seen that he exhorted the bauris present at the meeting by his address to give one vote to him and the other to respondent—2, his helper on pain of fine and ex-communication and further he asked the bauris present at the meeting to convey the caste mandate to the absentee bauris. It has also been seen that as a result of the persuasion at the meeting, propagation of the mandate issued there and the threat of fine and ex-communication attending the non-observance of the mandate there was change of attitude among the bauri electors and the support for the Congress as assured at the beginning was withdrawn and votes were assured to respondents 1 and 2. Thus, there is no difficulty to assess the corrupt practice of undue influence so far as respondent—1 is concerned. In the language of the definition to make respondent—1 guilty of undue influence what is necessary to be proved is if respondent—2 connived in the matter of persuasion, exhortation and use of intimidation at the Sukunda meeting and so interfered with the free exercise of their franchise by the bauri electors of the constituency. Respondent—1's expenses, if not all, were met by respondent—2 as admittedly the latter placed his loud speaker, van, car and workers at the disposal of respondent—1 and there was a mutual exchange of promise between the two to help each other in the election canvassing. Apart from the fact that respondent—1 has adopted respondent—2's written statement *mutatis mutandis*, respondent—2 exercised full control over respondent—1 through Sri Dibakar Patnaik R. 2, W. 41, the prime mover of the respondent's party viz. Swadinajana Sanga Party and through Abdul Rauf R. 2, W. 44 his worker who seconded respondent—1's nomination and contributed a sum of Rs. 50 for his election expenses. It is denied that respondent—1 was financed by respondent—2 but the statement of respondent—2, that he lent his workers, car, van, loud speaker, supplied him with blocks and wall-posters secured at joint expense and that he did not ascertain the financial position of respondent—1, all taken together lead to the unhesitating conclusion that respondent—2 did everything necessary for respondent—1 in connection with the propaganda and canvassing in the constituency. If respondent—2 was doing everything for respondent—1 and the latter was set up by the former to suit the needs of the party to which respondent—2 belonged through Abdul Rauf and Sri Dibakar Patnaik, it can be said that irrespective of respondent—2's presence at the meeting at Sukunda, in the affairs of the meeting there was active connivance of respondent—2. Thus, on the facts brought on record, it is also to be held that corrupt practice of undue influence as defined in Sec. 123(2) is also committed by respondent—2 as he must at least have known of the meeting at Sukunda and connived at it although there is no direct evidence of his having financed or organised the meeting.

29. The question next to be considered is if coercion and intimidation were also committed by the two respondents. Coercion and intimidation have been defined in the explanation to Sec. 100(1)(b). The expression "coercion, intimidation" means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election and includes a social or economic boycott of members of a community, group or section or threat of such boycott with intent to interfere with the free exercise of such right by those members. Here the evidence as led has shown that interference with the free exercise of right to vote resulted in the Bauri voters refraining from voting in favour of the Congress which they had originally decided and such interference was also attended with threat of social boycott and fine. As already seen the Bauris of Bhavanipur to which village P.Ws. 7, 8, 9 and 10 belong have been socially boycotted at the meeting held at Tarini hill later, as we find from the printed rule Ex. 27 last but one paragraph. About the social ostracism, it is said that it was due to one Madan Das of Bhavanipur giving his daughter in marriage to a son of a fallen woman Jama Dasiani in village Bandahuda, but as already discussed such a version is against the responden's own evidence as R.1.W. 20

the Behera of Bhavanipur has clearly admitted that the Bauris of Jagannathpur where another son of the woman was married on the same day are still in the caste and do not suffer from the ban of ex-communication. Leaving aside the ostracism of the Bauris of Bhavanipur on the ground stated by the petitioner as a doubtful fact, there is sufficient evidence of threat of fine and ex-communication being given to the Bauri electors in case they did not abide by the mandate and this mandate attended with threat being extensively propagated in the constituency. Thus we hold that the offence of coercion and intimidation was also committed and the free exercise of right to vote of the Bauri electors was interfered with. The finding being that undue influence, coercion and intimidation were committed by both the respondents it follows that there was no free election in the Berhampur constituency as a result of undue influence, coercion and intimidation being exercised over the Bauri electors and as such the result of the election has been materially affected.

30. The corrupt practice of bribery as adverted to in Issue—6 is without the necessary particular. The petitioner being called upon to furnish necessary particular he adopted the item of bribery given in the counter of respondent—5 by filing a verified petition. The charge of bribery being without the necessary particular and no evidence on the point at the trial having been led by the petitioner we hold that the corrupt practice of bribery was not restored to by respondents 1 and 2 and their agents or by any other person with their knowledge or connivance.

31. *Issues 2 and 3.*—Issue—2 deals with the factual aspect while Issue—3 with the legal aspect of the disqualification of respondent—1 arising out of his holding an "Office of profit" under the State government. Very little stress is laid on the jurisdiction of the Tribunal to enquire into the question of disqualification which is covered by issue—3. Art. 191 of the Constitution deals with the disqualification for membership and Art. 192 deals with the Governor's decision on the question of disqualification. In cases where the member has become subject to any of the disqualifications mentioned in Cl. 1 of Art. 191 the question shall be referred to the decision of the Governor and his decision shall be final. But the matter here is different in as much as the membership itself is questioned on one of the grounds of disqualification contained in Art. 191. Any way, as the jurisdiction of the Tribunal is not questioned at the hearing Issue—3 shall be decided against the respondents.

32. What is material for consideration is whether respondent—1 suffered from the disqualification at the time he filed nomination i.e., on 10th November, 1951. It is not disputed that respondent—1 had resigned from Government service before he filed the nomination on 10th November, 1951. What is meant to be stressed upon on petitioner's side is that there was no valid discharge from Government service at the moment respondent—1 filed the nomination and as such he shall be deemed to be labouring under the disqualification even though he had submitted resignation beforehand and the same had been accepted. The petitioner's learned advocate takes us through Rules 813, 984, 1072 of Police Manual to urge that the discharge was not in the manner and according to the form prescribed and that the clothings of the police department were not made over as required by the rules. He also refers to Sec. 9 of the Police Act and urges that respondent—1 cannot resign without the leave of the Superintendent of Police and unless he shall have given to his superior, notice in writing for a period not less than two months of his intention to resign. The respondent's lawyer has seriously disputed the correctness of the above position by saying that Police Manual is a guide to the police officer and the rules therein are mere directory and not mandatory; Further both sides having agreed to the position the rules can be waived. In this case, what we come to see is that the police department accommodated the respondent—1 readily when he made an application expressing his intention to resign. The compensation fee of Rs. 286 and odd was also readily calculated and realised. The argument of the petitioner's advocate has been narrowed down to the position that there is no evidence that respondent—1 was actually relieved in the forenoon of 10th November, 1951 as noted in the various orders passed by the department. Further the discharge order Ex. M as produced here is not the real order, the same not having been produced at the time the nomination was filed. The compensation of Rs. 286-5-0 having been duly received in the morning hours of 10th November, 1951 after due calculation and to challenge the said fact there being nothing on the petitioner's side we would feel inclined to hold that respondent—1 was discharged in the forenoon of 10th November, 1951 even though the prescribed discharge form was not filled up and that the compensation amount was realised from respondent—1 in the forenoon of that day. Accordingly, we

and that discharge was given effect to in the forenoon of 10th November, 1951 and as such by the time the nomination was filed respondent—1 was not holding an office of profit. Relying on Supreme Court decision reported in A.I.R. 1952 Supreme Court page 64 it is sought to be argued by petitioner's advocate that the election day means the whole day and even if respondent—1 was discharged in the forenoon of 10th November, 1951, still he shall be deemed to hold office of profit. The facts of the above decision are clearly distinguishable from the facts before us and as such we hold that it has no application. Issue—2 shall, therefore, be decided against the petitioner.

33. Issue 4.—Not pressed.

34. Issue 7.—Under this issue certain irregularities are alleged to have been committed in the conduct of the election at some of the polling booths. Out of the irregularities set forth in the said paragraph only two are worth noticing.

35. It is said that the list of polling stations and booths and the dates of poll and the particulars relating to the group of villages who are to vote there at on the dates assigned to them were given at a very late stage of five or six days before the polling commenced and that the list supplied relating to Ralabha village contained a mistake viz., that the electors of Karaona are to vote at Dumi Dumi polling station for casting their votes on 4th January 1952, that actually their votes were recorded on 1st January 1952 at Konisi polling station and that this mistake was communicated by a clerk to the presiding officer of Konisi at 11 A.M. on 1st January 1952. It is consequently urged by the petitioner that as they had previously instructed the electors of Ralabha to poll at Dumi Dumi on 4th January 1952, they had no opportunity to take them to Konisi on 1st January 1952. Owing to this mistake and late intimation on the part of the election office, it is admitted by the contesting respondents that there was a mistake in the typed particulars that were supplied to the candidates. But it is urged by them that the original lists that were available in the election office did not contain any such mistakes and that they looked into the said original lists and that, therefore, there was no reason to be misled as it was open for all candidates and their agents to look into these papers in the election office. The number of electors of Ralabha village are said to be about 400 and odd and there is no data in the evidence to find out as to how many actually polled and whether the petitioner got any votes from them. The number of votes actually polled would appear to be far less than the number of electors in that village. It is, therefore, not possible to assess whether any material irregularity effecting the result of the petitioner's election has at all been committed. Moreover, in view of the finding that the entire election has been vitiated by undue influence, this point does not assume importance. We, therefore, consider it futile to pursue this point further.

36. Similarly, it is urged that so far as Berhampur municipal town is concerned the lists supplied did not indicate the wards and, therefore, the electors did not know the actual place where they had to go and poll and consequently there was some confusion. We do not find any substance in this contention because if necessary care was taken by the candidates or their agents it was possible for them to guide the electors to their respective booths irrespective of the wards to which they belonged. Moreover, the handicap, if any, caused on this point was common to all the candidates.

37. Issue 8.—Under this issue the petitioner alleges that two items of election expenses which ought to have been included in the return of respondent—2 have not been so included. The first is that the zamindar of Bodokhemidi lent his Car O.R.G. 18 to respondent—2 exclusively for his use for a period of about three weeks before the election for the election and that respondent—2 put his own petrol and paid the driver and ran the car all these days and on that account he must have incurred an expenditure of about Rs. 300 and odd on the petrol and the driver. P.W. 35 the zamindar states that he lent his car to respondent—2 and supports the above allegations of the petitioner and his driver (P.W. 37) corroborates him. On the other hand, respondent—2 as R.2.W. 59 totally denies the allegations and that he ever took the car of P.W. 35. He further examines R.2.W. 41 Sri Dibakar Patnaik, a member of the assembly who supported respondent—2 in his elections, to say that he took the car O.R.G. 18 from P.W. 35 and used it for his own election in a different constituency for about the same period for which it is alleged to have been lent to respondent—2. It is unfortunate that persons of such standing and respectability as P.W. 35, respondent—2 and R.2.W. 41 should be at variance on such a point of fact. Respondent—2 and P.W. 35 are residents of Berhampur town. R.2.W. 41 has got his home at Chikati 20 miles from Berhampur and has a lodging in Berhampur town, and moves between

Berhampur and Chikati for his political and electioneering activities. If O.R.G. 18 was lent to respondent—2 exclusively it is natural to expect that at the end of each day's work the car would return to the garage of P.W. 35 and not left outside with respondent—2. Taking the evidence and circumstances into consideration, we are inclined to believe that the car O.R.G. 18 was probably used by R.2.W. 41 and respondent—2 for their election purposes and it is not possible to separate the two and assess and there is no data to assess what part of the petrol and the expenses are to be attributed to the election of respondent—2. In the above circumstances, we are, therefore, unable to find definitely that respondent—2 has intentionally omitted to keep out this item from the return of expenses furnished by him.

38. Similarly, it is urged by the petitioner that item of printing of a hand-bill Ex. 31, of the Sarada Press, Berhampur has been omitted by respondent—2 from the expenses; but the bill Ex. 31, does not specifically show that it relates to the printing of the said hand-bill and we are, therefore, not in a position to definitely find that respondent No. 2 has intentionally omitted this item also from his return. We, therefore, find that there is no data to clearly show any deliberate omission in the return of election expenses given by respondents 1 and 2.

39. Issue 9.—In view of the finding on Issue—1 this issue is not of much importance and therefore, no finding need be given on it.

40. Issue 10.—This issue does not arise in the circumstances of the case.

41. Issue 11.—In view of the findings above on Issues 1, 5 and 6, this petition succeeds. The election is declared wholly void under Sec. 100(1)(a)(b) and (c) of the Representation of People Act. The finding under issue No. 1 though directly concerns respondent—1, still such a finding affects the entire election this being a plural constituency. As found under Issues 5 and 6 we hold that the corrupt practice of undue influence, coercion and intimidation have been proved to have been committed by respondent—1 with the connivance of respondent—2. We accordingly hold that respondent—1 shall be disqualified for membership of Parliament and the State Assembly for a period of six years commencing from this date under Sec. 140 of the Act while respondent—2 is exempted from the said disqualification in view of the fact that his complicity in the corrupt practice has been found to be of not direct but were of a secondary nature under Sec. 99 of the Act. Respondents 1 and 2 shall pay Rs. 500 as costs to the petitioner and Rs. 100 to respondent No. 3.

Dictated to the shorthand writer and pronounced in open Court this 17th day of March 1953.

(Sd) D. N. DAS, *Chairman.*

(Sd.) G. KRISHNAMURTHY, *Member.*

(Sd) R. K. RATHOR, *Member.*

The 17th March, 1953.

*Witnesses examined for the Petitioner*

**P.W.**

1. Binayak Acharjya.
2. Bhubani Sabat.
3. Satyanarayana Patnalk.
4. N. Jagannadharao.
5. Brundaban Chandra Patnalk.
6. B. J. Patnalk.
7. Mathura Das.
8. Nanda Das.
9. Babaji Das.
10. Budhia Das.
11. Sukria Das.
12. Madhusudan Satapathy.

13. Khalli Hati.
14. Gopalkrishna Das.
15. Khalli Charan Das.
16. Bhima Maharana.
17. Bhagaban Naik.
18. Gobind Patra.
19. Dattj Appalla Raju.
20. Rama Panigrahi.
21. Raghunath Patnalk.
22. K. Labanya Das.
23. M. Gangulu.
24. Somnath Patra.

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|---|--------------------------|
| 25. Khalli Patra.                         | 36. Prahallad Kar.       |
| 26. T. Dasarathi Patra.                   | 37. Krishna Mahanti.     |
| 27. D. Krishnamurti.                      | 38. Ramaballabha Brahma. |
| 28. Jagannadha Panda.                     | 39. Chakrapani Sahu.     |
| 29. Tarini Naik.                          | 40. Bhagirathi Patra.    |
| 30. Sima Malana.                          | 41. Ramayya Reddi.       |
| 31. Kulamani Naik.                        | 42. Trilochan Patra.     |
| 32. Debahari Majhi Samanta.               | 43. Banchanidhi Raut.    |
| 33. Raghunath Pathi.                      | 44. P. R. Misra.         |
| 34. Ramachandra Nahak.                    | 45. Mohan Nayak.         |
| 35. Sri Ramachandra Ananga Bhima-<br>deb. | 46. S. N. Mohapatra.     |

*Witnesses examined for Respondent No. 1*

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|--------------------|---------------------------|
| R.W. 1. Rama Das.  | 19. Nila Naik.            |
| 2. Ghana Das.      | 20. Sombaria Behera.      |
| 3. Dukha Das.      | 21. Ranganath Paricha.    |
| 4. Naran Nahak.    | 22. Padmalabha Patra.     |
| 5. Krishna Das.    | 23. Bhatruhari Choudhuri. |
| 6. Sanya Das.      | 24. Krishnachandra Patra. |
| 7. Gurunath Das.   | 25. Krupasindhu Sahu.     |
| 8. Bisa Das.       | 26. Param Patra.          |
| 9. Guni Das.       | 27. Syamaghana Mohanti.   |
| 10. Ujala Das.     | 28. Balshnab Das.         |
| 11. Baya Das.      | 29. Kama Das.             |
| 12. Bijuli Das.    | 30. Ujal Panigrahi.       |
| 13. Goda Das.      | 31. Gobind Panigrahi.     |
| 14. Kanhai Das.    | 32. Lokanath Das.         |
| 15. Ganga Das.     | 33. Sanyasi Bhalabhai.    |
| 16. Gouranga Naik. | 34. Dandapani Das.        |
| 17. Goboria Das.   | 35. Kallecharan Acharjya. |
| 18. Gura Naik.     |                           |

*Witnesses examined for Respondent No. 2*

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|------------------------------|-------------------------|
| R.W. 1. Gourahari Samantara. | 20. Sima Naik.          |
| 2. Gobind Chandra Misra.     | 21. Biplacharan Sahu.   |
| 3. Narasingh Ch. Sahu.       | 22. Bhagirathi Mohanty. |
| 4. Gopinath Maharana.        | 23. Sebak Naik.         |
| 5. Dayanidhi Jenna.          | 24. Kantaru Naik.       |
| 6. Parasuram Sahu.           | 25. Rama Padhi.         |
| 7. Ramachandra Naik.         | 26. Damodar Sahu.       |
| 8. Harikrishna Sahu.         | 27. Iswar Patra.        |
| 9. Satrughana Samal.         | 28. Haddu Subudhi.      |
| 10. Premraj Agarwalla.       | 29. Raghunath Patnaik.  |
| 11. Dandapani Sahu.          | 30. S. Paparao.         |
| 12. Simadri Naik.            | 31. Dandapani Sahu.     |
| 13. Trinath Panda.           | 32. Arjun Mahapatra.    |
| 14. Kama Malene.             | 33. Ramakrishna Sahu.   |
| 15. Gopinath Naik.           | 34. Biswambhar Sahu.    |
| 16. Mangulu Naik.            | 35. Bhima Gouda.        |
| 17. Chakrapani Naik.         | 36. Jagannath Mandal.   |
| 18. Haribandhu Naik.         | 37. Ch. Chakrapani.     |
| 19. Kama Naik.               | 38. Sribatsa Sabat.     |

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|------------------------|-----------------------|
| 39. Arjun Patnaik.     | 50. Brajanand Das.    |
| 40. Banchanidhi Padhy. | 51. Basudeb Samal.    |
| 41. Dibakar Patnaik.   | 52. Parasuram Patra.  |
| 42. Adikand Sahu.      | 53. Narayana Behera.  |
| 43. Kasinath Sahu.     | 54. Kora Gouda.       |
| 44. M. A. Rauf.        | 55. Gopinath Behera.  |
| 45. D. Lachayya.       | 56. Bauri Sahu.       |
| 46. Gopi Patra.        | 57. Khalli Chaudhuri. |
| 47. Gouranga Raul.     | 58. Appanna Padhi.    |
| 48. Udayanath Sahu.    | 59. Sri R. C. Misra.  |
| 49. Lokanath Sahu.     |                       |

*Witnesses examined for Respondent No. 4*

R.W. 1. Udayanath Dalai.

*Witnesses examined for Respondent No. 5*

R.W. 1. Dharmu Sahu.

2. Haribandhu Patra.

*Exhibits marked for the petitioner*

1. Application for admission into M.O.M. School, Berhampur, dated 24th June 1937.
2. Application for half-fees concession dated 24th June 1937.
- 2-a. The endorsement of the Hd. Master dated 25th June 1937 on Ex. 2.
3. The Transfer Certificate Register.
- 3-a. The counterfoil transfer certificate bearing Srl. No. 591 dated 23rd June 1942.
4. The outerfoil of T. C. bearing Srl. No. 591.
5. Admission Register relating to Dandapani Das.
6. Transfer certificate of Dandapani Das in Khallikote College, bearing Srl. No. 70.
7. Entry No. 1167 in the University Marks-sheet.
8. Application for appearing in the Matric Examination.
- 8-a. The signature of the Hd. Master on the back of Ex. 8.
9. Historical Register A maintained under Mad. Educational Rules.
- 9-a. Historical Register B.
- 9-b. Historical Register C.
- 9-c. Entry No. 22 relating to Dandapani Das in Ex. 9-b.
10. Application for membership in the Co-operative Urban Bank, Berhampur.
11. Application dated 9th May 1948 for a loan.
12. Collateral Security Application, dated 9th May 1948.
13. Affidavit of Dandapani Das for the loan.
- 13-a. Affidavit of Dandapani Das for the loan.
14. Registered mortgage bond dated 28th May 1948 executed by Dandapani Das.
15. Receipt dated 25th May 1948.
16. Surety bond dated 28th May 1948.
17. Admission Register of the Urban Bank. (Entry No. 6976).
18. Service Register of Dandapani Das.
- 18-a. The first page of the service register of Dandapani Das.
- 18-b. A slip attached to the service register, accepting the resignation of Dandapani Das.
19. The candidate Register.
- 19-a. Entry No. 35 in Ex. 9.
- 20 and 20-a. Nomination paper of Dandapani Das with Addl. Copy.
21. The objection petition of Mohan Naik, dated 14th November 1952.

- 21-a. The true copy of application dated 24th June 1937 for admission into M. O. M. School, Berhampur.
- 21-b. Endorsement of the Returning Officer on Ex. 21.
22. Affidavit of Dandapani Das dated 14th November 1951.
- 23 to 23-h. Form No. 14 relating to the account of ballots polled.
24. Election Expenses of Dandapani Das.
25. Election Expenses of Sri R. C. Misra.
- 25-a. Bill No. 184 dated 25th February 1952.
- 26 to 26-m. Form No. 6 relating to appointment of counting agents of Respondents 1 and 2.
27. Printed rules regulating the conduct of the Bauri community.
- 27-a. The original manuscript copy of Ex. 27.
- 'X'. A printed pamphlet in yellow paper.
- Ex. 28. A hand-bill for caste meeting of Bauries at Sukunda. (Yellow pamphlet marked X).
29. The duplicate of Bill No. 30 dated 2nd June 1952 for Rs. 113-8-0.
30. A handbill for G. Narayanamurti printed.
31. A printed handbill for R. C. Misra and Dandapani Das
32. Copy of Ex. L with the name of the Press printed.
33. Copy of Weekly Confidential Diary of Berhampur P. S.
- 33-a. Original diary of Weekly Confidential Diary of Berhampur P. S.
34. Signature of the Dy. Superintendent of Police on the last page of the Service Register Ex.
- 34-a. Endorsement in the handwriting of S. N. Padhi on the verification roll (Vide on Ex. 18—last page).
35. The accounts in Form No. 16.
36. The printed list of Polling Stations with dates of poll against each.
37. The copy of telegram sent to Inspector, Enforcement.
38. Office copy of confidential report dated 23rd January 1952 to Supdt. of C.I.D. Enforcement, Cuttack.
39. The verification roll of Dandapani Das.
40. The agreement of Dandapani Das in Service Register.
41. The medical history sheet of Dandapani in Service Register.
42. The entry of discharge order in the Service Register.
43. The printed pamphlet for communist party.
44. The return of expenses of Sri Dibakar Pattnaik.
45. The sale deed dated 30th November 1951 executed by Sri R. C. Misra.
46. The sale deed dated 28th July 1949 in favour of Sri R. C. Misra.
47. The fees book of Sri R. C. Misra.
48. The Nibedan of Sri R. C. Misra (a printed pamphlet).
49. The wallposter of Sri R. C. Misra.
50. The note book of Sri R. C. Misra. making a note of his daily election expenses.
51. The daily edition of Praja Tantra. dated 23rd January 1953.

*Documents marked for respondents*

- Ex. A.—The entry No. 12 in the Register Ex. 9-a for the year 1935-36, relating to Mohan Nalk.
- Ex. B.—The signature of Sri Bishnu Prasad Misra, Dy. Superintendent of Police dated 8th September 1952 in Ex. 18.
- Ex. C.—The pay roll of Dandapani Das for the month of November 1951.
- Ex. D.—The resignation application of Dandapani Das dated 7th November 1951.
- Ex. E.—The message of Superintendent of Police dated 7th November 1951 to D.I.G.

- Ex. E. 1.—Reply of D.I.G. to S.P. dated 9th November 1951.
- Ex. E. 2.—The endorsement on the back of Ex. E. 1.
- Ex. F to F. 9.—The nomination papers of other 10 candidates.
- Ex. G to G. 8.—The rejected ballot paper account of 9 candidates in form No. 15
- Ex. H to H. 6.—The election expenses of 7 members.
- Ex. J to J. 66.—Sealed packets containing lists of marked copies of Electoral Rolls.
- Ex. K.—A receipt for Rs 50/- granted by Gopal Das in Ex. H.
- Ex. L.—A printed handbill dated 11th November 1951 by G. Narayana-murti.
- Ex. M.—The discharge order of Dandapani Das.
- Ex. 'Y'.—A printed handbill for a meeting at the Tarini hills.
- Ex. N.—A printed handbill for meeting at Tarini hills.
- Ex. O.—The attendance register of teachers from 1932—38.
- Ex. P.—Pupils' admission register from 1930—35.
- Ex. P. 1.—The entry No. 383 relating to the admission of Dandapani Das.
- Ex. P. 2.—The remarks of S.D.I. in the Elementary School Admission register dated 5th October 1934.
- Ex. Q to Q.7.—Pupils' attendance registers from 1932—37
- Ex. Q. 5/A. The last entry of attendance of Dandapani in Ex. Q. 5.
- Ex. R.—Progress and conduct register of Municipal Oriya Elementary School.
- Ex. R. 1.—The entry in the progress register relating to Roll No. 383 in Ex. R.
- Ex. S.—The progress register of Pupils.
- Ex. T.—Entry No. 883 in the Birth Register of Berhampur Municipality relating to the year 1918.
- Ex. T. 1.—Entry No. 468 in the birth register of Berhampur Municipality regarding birth of a son in 1921.
- Ex. T. 2.—Entry No. 825 in the above register for the birth of a son in 1923.
- Ex. T. 3.—Entry No 362 in the above register for the birth of a son in 1926.
- Ex. T. 4.—Entry No. 114 in respect of the birth of a male child in the year 1933 in the above register.
- Ex. U.—The entry in the vaccination register relating to entry No. 468.
- Ex. U. 1.—Entry in Vaccination Register relating to Entry No. 825/14 of the birth register.
- Ex. U. 2.—The entry in the Vaccination register relating to entry No. 362 of the birth register.
- Ex. U. 3.—The entry in the Vaccination Register relating to entry No. 114 of the birth register.
- Ex. V.—The appointment certificate.
- Ex. W.—The entry No. 2276 dated 10th November 1951 in the 'D.O. Book of the S.P.'s office.
- Ex. X.—The entry in the General Cash Book dated 10th November 1951.
- Ex. Z. 1.—The counterfoil of receipt for Rs. 286-5-0.
- Ex. AA.—The initial with date of the Superintendent of Police over a wireless message dated 9th November 1951.
- Ex. A.A. 1.—The endorsement dated 9th November 1951 on the wireless message.
- Ex. A.A. 2.—The account sheet on the back of the wireless message.
- Ex. B. B.—The receipt for Rs. 40/- in Ex. 25.
- Ex. B.B. 1.—The receipt for Rs. 30/- in Ex. 25.
- Ex. C.C.—The printed copy of electoral roll in respect of Karan Sahi booth in Berhampur Polling station.

Ex. D. D.—The copy of statement showing the polling programme of Berhampur constituency.

Ex. E. E. The list of villages accompanying the polling programme.

(Sd.) D. N. Das, *Chairman*.

(Sd.) G. KRISHNAMURTY, *Member*.

(Sd.) R. K. RATHOR, *Member*.

[No. 19/223/52-Elec. III.]

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P. R. KRISHNAMURTHY, *Asstt. Secy.*